RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15


# महाराष्ट्र शासन राजपत्र

## भाग एक–ल

वर्ष ६, अंक ९] गुरुवार ते बुधवार, मे ८-१४, २०१४/वैशाख १८-२४, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

## प्राधिकृत प्रकाशन

**(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.**

### BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) Nos. 132 OF 1994 and 161 OF 1994.—Executive Engineer, Hydro Electric Project Investigation Division No. 3, Ratnagiri (Kuvarbav), (Now Division No. 1 Bhatsanagar, Taluka Shahapur, Dist. Thane).—*Petitioner* (Respondent of Revision Application (ULP) No. 161/94).—*Vs.*—Pradeepkumar Dattatraya Audhkar, At Post Pali, Dist. Ratnagiri.—*Respondent* (Petitioner of Revision Application (ULP) No. 161/94).

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocate*.— Shri D. J. Mangsule, Assistant Government Pleader for the Petitioner.

Smt. N. A. Ramtirthakar, Advocate for the Respondent.

*Judgment*

These Revisions are arising out of a Judgement and order passed in Complaint (ULP) No. 130 of 1990 by Labour Court, Kolhapur whereby an employer is directed to absorb an employee with continuity of service but without back wages.

2. Revision Application (ULP) No. 132/94 is preferred by employer challenging impugned decision entirely whereas Revision Application (ULP) No. 161/94 is preferred by an employee challenging impugned decision to the extent of refusal of back wages.

3. Admittedly, the Petitioner of Revision Application (ULP) No. 161/94 who is Respondent of Revision Application (ULP) No. 132/94 (hereinafter referred to as the Complainant) was in employment of Petitioner of Revision Application (ULP) No. 132/94 who is Respondent of Revision Application (ULP) No. 161/94 (hereafter referred to as the Executive Engineer) as a Tracer from 24th October 1983. His services were then terminated on 26th June 1986. He then filed Complaint (ULP) No. 154/87 before Labour Court, Kolhapur challenging the termination. It was allowed on 17th March 1989 directing the Executive Engineer to absorb him on his original post by giving preference as and when vacancies arise and the Divisions are started,

with continuity of service. The Complainant challenged said order *vide* Revision Application (ULP) No. 25/89 before this Court. I must stated here itself that the Executive Engineer did not challenge said order. Revision Application (ULP) No. 25/89 came to be dismissed on 8th November 1990. The Executive Engineer then appointed him for the period 5th May 1990 to 2nd June 1990 or 29 days from the date of joining, *vide* order dated 5th May 1990. Accordingly, the Complainant joined the services. His appointment was further continued, till 9th July 1990. The Executive Engineer then terminated/retrenched him with effect from 30th June 1990 by determining the retrenchment compensation payable to him, *vide* order dated 30th June 1990. It is stated in the order that he should collect etrenchment compensation from Divisional Office between 2nd July 1990 to 15th July 1990 during office hours.

4. The Complainant then filed above complaint on 7th July 1990 alleging that he was absorbed on preferential basis as per order in Complaint (ULP) No. 154 of 1997 and put in continuous service for more than 240 days. Even then, he is terminated by dis-obeying stay order. His service record is clean and unblamished and ample work is available with the Executive Engineer. He therefore, alleged that his termination is an unfair labour practice under items 1(*a*), (*b*), (*d*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Eventually, he prayed for reinstatement with continuity of service and full back wages by setting aside the termination/retrenchment order.

5. The Complainant also made an application under Section 30(2) of the M.R.T.U. and P.U.L.P. Act alongwith the complaint to allow him to join duties till decision of main complaint. The Labour Court then passed an *ex-parte* order directing the Executive Engineer to allow the Complainant to join duties until further orders, with showcause notice.

6. The Executive Engineer then filed its say cum written statement at Exh. C-14 and traversed all material allegations made by the Complainant. He contended that as per order in Complaint (ULP) No. 154/87, the Complainant was appointed to meet the exigencies of work by order dated 5th May 1990 and actually worked from 10th May 1990 to 7th June 1990 (29 days). Later on he was appointed for the period 11th June 1990 to 9th July 1990. However, the Sub-Division to which he was appointed *i.e.* Hydro Electric Project Investigation Sub-Division No. 3/B at Phonda was ordered to be closed with effect from 30th June 1990 as per order of the Chief Engineer. Eventually, his services were terminated by offering due compensation under Section 25 F of the I. D. Act. He further contended that the Complainant was not appointed on regular temporary establishment and hence was legally retrenched. In fact, the Complainant never worked continuously for 240 days. As such, the Complainant cannot be reinstated nor it is possible to reinstate him in any other sub-Division. Finally, the Executive Engineer prayed for dismissal of the complaint.

7. The Labour Court framed issues at Exh. 16 and the parties went to the trial. The Complainant produced copies of his apointment orders and of the judgment in Revision Application (ULP) No. 25/89 by this Court. He then examined himself at Exh. 24. The Executive Engineer examined himself at Exh. 28 and produced all Government orders.

8. The Labour Court, on perusal of evidence and hearing both parties, observed that Junior Tracer Shri More was retained in service and there is no material on record to show that now no work is available. It further observed that services of employees working under other Sub-Divisions are not terminated. It then observed that Complainants services need to be utilised elsewhere and he cannot be thrown out of service as has rendered service for a long time. Ultimately, it directed to abosorb the Complainant elsewhere with continuity of service but without back wages, *vide* judgment and order dated 4th June, 1994. The same is challenged in these Revisions.

9. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision warrants interference ?

(*ii*) Whether the Complainant is entitled to back wages ?

(*iii*) What order ?

10. My findings, on above points, are as under :—

(*i*) Yes, to the extent of continuity of service.

(*ii*) No.

(*iii*) Both Revision Applications are dismissed with some modification in impugned decision.

**Reasons**

11. Learned Assistant Government Pleader Shri Mangsule argued that the Complainant was employed as and when work was available, as per directions of Labour Court in Complaint (ULP) No. 154/87. However, concerned Sub-Division was ordered to be closed by the Chief Engineer. As such, he was terminated by tendering retrenchment compensation but he refused to accept the same. The Complainant is in employment from 9th September 1990 by virtue of interim order in the later complaint but it does not entitled him to be absorbed. The Labour Court extended misplaced sympathy to the Complainant. Finally, he submitted that employer's Revision be allowed and Complainant's Revision be dismissed.

12. Smt. Ramtirthakar, learned Advocate representing the Complainant replied that factual findings recorded by learned Labour Court cannot be re-appreciated. The Complainant is working from 9th September 1990 till to-day and it implies that ample work is available and that too of perennial nature. The employer is bound by directions in Complaint (ULP) No. 154 of 1987 and, consequentially to back wages also. Finally she submitted that Complainant's Revision Application be allowed and employer's Revision Application be dismissed.

13. Learned Labour Court has recorded a factual finding that Tracer Shri More was junior to the Complainant and continued in service and hence the termination is bad. It also recorded a factual finding that other employees were working under same Sub Division are transferred elsewhere. In my judgment the factual finding is well justifiable and needs no disturbance.

14. The Complainant has admitted in cross examination that there was no work which could be provided to him and, therefore was terminated. He deposed in examination-in-chief that he refused to accept retrenchment compensation. In the circumstances, plea of the Executive Engineer that the Sub-Division came to be closed and there was no work which could be provided to the Complainant, is well justifiable. However, the Executive Engineer ought to have transferred the Complainant elsewhere like other employees of same Sub Division. I, therefore find that remedial relief given by learned Labour Court is well justifiable.

15. Admittedly, the Complainant is in employment from 9th September 1990. Therefore, question of granting back wages does not arise. Eventually, his Revision Application claiming back wages is liable to be dismissed. As regards, continuity of service, the Sub-Division is already closed. Direction to absorb the Complainant is a remedial relief. Therefore, in the peculiar facts and circumstances of this case, the Complainant is entitled to continuity of service from 9th September 1990 only. He is ordered to be absorbed and hence his not entitled to continuity from 24th October 1983. He has to forego some benefits as is ordered to be absored. Eventually, impugned decision needs to be modified to the extant of continuity in service. The Executive Engineer is directed to grant continuity to Complainant from 9th September 1990. I answer point Nos. 1 and 2 accordingly and dismiss both Revision Applications with above modification.

16. Before parting with this judgment, I must make it clear that the Complainant is working from 9th September 1990. As such, he is doing work of perennial nature. Eventually, direction to absorb him with continuity of service from 9th September, 1990 is proper. However, it should not be construed as a Rule for other employees but it is an exception, finally I pass following order :—

**Order**

(*i*) Both Revision Applications are dismissed with a modification that the Complainant is entitled to continuity in service from 9th September 1990 only.

(*ii*) Copy of this judgment be kept in other Revision Application.

(*iii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 27th August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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## BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 6 OF 2001.—Vilas Mahadeo Sakharpe, At Post Kodoli, Tal. Panhala, Dist. Kolhapur.—*Petitioner—V/s.*—(1) Competent Authority Depot Manager, (C) Senior, Maharashtra State Road Transport Corporation, Kolhapur Depot, Kolhapur.—*Respondent No. 1,* (2) Divisional Controller, MSRTC, Kolhapur Division, Kolhapur.—*Respondent No. 2.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocates*.— Shri A. T. Upadhya, Advocate for the Petitioner.
Shri M. G. Badadare, Advocate for the Respondents.

### Judgment

This is a Revision by original Complainant employee challenging legality of judgment and order passed in Complaint (ULP) No. 280 of 1998 by Labour Court, Kolhapur whereby relief of reinstatement with continuity of service and full back wages is refused by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant was working under present Respondent (hereinafter referred to as the Maharashtra State Road Transport Corporation) as a helper from the year 1980. He was on duty on 4th October 1995 in Corporation's workshop at Kolhapur Depot. The Corporation served a chargesheet dated 5th October 1995 upon him alleging misconducts under items 10, 18 and 26 of its Departmental Appeal Procedure alleging that he on 5th October 1995 at 1.45 a.m. rannaked from washing ramp to the air compressor and got the air blown on his person. Eventually, other employees rushed towards him and it resulted into disturbance to the working in the workshop. The Complainant denied the charges and then an enquiry took place. The Enquiry Officer held that all charges levelled against the Complainant are proved. Ultimately, he was dismissed with effect from 25th June 1997.

3. It is case of the Complainant that he was changing oil filter of a bus on the washing ramp at the relevant time. The filter slipped from his hand and oil of 2-3 liters from the filter got poured on his person. He then took a bath and went near the air compressor for drying the clothes. Even then a false and fabricated chargesheet is served upon him. Besides, the enquiry is not fair and proper and he was not given opportunity to defend himself. As such, it is contrary to principles of natural justice. In addition, findings are totally unsustainable in law and perverse one. It is further contended that the punishment of dismissal is shockingly disproportionate. On above averments, the Complainant prayed for declaration of requisite unfair labour practice, reinstatement with continuity of service and full back wages and other consequential reliefs.

4. The Corporation filed its written statement at Exh. C-12 and traversed all material allegations made by the Complainant. It contended that ample opportunity was given to the Complainant in the enquiry to defend himself and hence the enquiry is fair and proper. The findings are also well justifiable. Proved misconducts are grave and serious and, therefore, punishment of dismissal is legal and appropriate too. Thus, it justified its action and prayed for dismissal of the complaint.

5. The Labour Court then framed issues at Exh. O-19 and the parties went to the trial. The Complainant examined himself at Exh. U-22 and two witnesses at Exh. U-27 and U-31 respectively. The Corporation produced entire enquiry papers but did not lead oral evidence.

6. The labour Court then recasted the issued at Exh. O-32. The labour Court on perusal of evidence and hearing both parties held that the enquiry is fair and proper and findings are not perverse. It then held that proved misconduct is grave and serious, act of moral turpitude and hence punishment of dismissal cannot be said to be shockingly disproportionate. Finally it then dismissed the complaint by judgment and order dated 9th January 2001. The same is challenged in this Revision.

7. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of Labour Court that the enquiry is fair and proper and findings of Enquiry Officer are not perverse, need interference ?

(*ii*) Whether finding of the labour Court that punishment of dismissal is not shockingly disproportionate, is sustainable in law ?

(*iii*) What order ?

8. My findings, on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) The Revision Application is partly allowed.

**Reasons**

9. The Complainant preferred to file written argument at Exh. U-6. In addition Advocate Shri Upadhye made oral submissions. Shri Upadhye tried to canvas that the very charge of running naked and blowing air on one's person is inherently improbable as the Complainant is neither mad nor physic patient. Therefore, the entire theory alleged in the chargesheet is fabricated one and the Enquiry Officer has blindly endorsed the same. He further submitted that no opportunity was given to the Complainant to examine defence witnesses.

10. Shri Badadare, learned law officer representing the Corporation replied that evidence of eye-witnesses cannot be dis-carded. Finding of fact recorded by the Labour Court cannot be re-appreciated while entertaining the revision Application under Section 44 of the M.R.T.U. and P.U.L.P. Act. As such, findings of the labour Court do not warrant interference.

11. It is no-bodys case that the Complainant is a lunatic or insane or sufering from grave mental disorder. Even then, factual finding recorded by learned labour Court, which is plaussible one, cannot be disturbed while exersing revisional powers under section 44 of the M.R.T.U. and P.U.L.P. Act. The Complainant has stated in the spot statement that he took bath as the oil got poured on his person and was drying his underwear near the compressor. In such circumstances, I do not find any perversity in finding of learned Labour Court. As such, no interference is warranted. Accordingly, I answer point No. 1 in the negative.

12. Advocate Shri Upadhye in the second phase argued that the Complainant is poor helper working since 1980. He has not committed similar misconducts in the past. Alleged incident took place in night shift at 1.45 a.m. when there were marginal member of employees. The misconduct cannot be said to be an act of moral turpitude. As such, punishment imposed is certainly shockingly disproportionate.

13. Advocate Shri Badadare replied that proved misconduct is neither minor nor technical and hence item 1(*g*) of Sch. IV of M.R.T.U. and P.U.L.P. Act is not attracted.

14. Admittedly, the incident took place at 1.45 a.m. in the workshop. It is also not disputed that the Complainant was working at the washing ramp at the relevant time. The fact that oil got powered on his person while removing the filter, is not disputed by the Corporation. In such circumstances, he has no alternate than to take a bath. Naturally he has no additional clothes with him. It appears that he was drying his underwear near the compressor in a isolated place and that too at mid-night. I restrain myself in elaborately discussing his comfortable and panic position. Suffice to say that his act of drying underwear near the compressor was involuntary. In such circumstances, it cannot be branded an act of moral turpitude. His such misconduct is certainly minor one. As such, punishment of dismissal is certainly shockingly disproportionate. It appears that his minor misconduct was unnecessarily high-lighted before learned Labour Court, which has resulted into dismissal of the complaint. In the eyes of law, the misconduct is minor one. I, therefore, find that punishment of dismissal is certainly disproportionate. Accordingly, I answer point No. 2 in the negative.

15. A next question arises about the relief to which the Complainant is entitled too. Admittedly, he is dismissed with effect from 25th June 1997 and is out of employment since then. Withdrawal of his back wages till 31st August 2002 is more than sufficient punishment for him. As such, he is entitled to reinstatement with continuity of service but without back wages.

16. Finally, I pass following order :—

**Order**

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned judgment and order dismissing the entire complaint entirely is quashed and set-aside.

(*iii*) The complaint is partly allowed.

(*iv*) It is declared that original Respondent has engaged in unfair labour practice under item 1(g) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Original Respondent is directed to cease and desist from engaging in such unfair labour practice, forthwith.

(*v*) Original Respondent is directed to reinstate the Complainant with continuity of service but without back wages.

(*vi*) This order shall be effective from 1st September 2002.

(*vii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Maharashtra,
Kolhapur.

Kolhapur,
Dated 23rd August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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**BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR**

REVISION APPLICATION (ULP) No. 52 OF 2001.—Chief Officer, Ichalkaranji Municipal Council, Ichalkaranji.—*Petitioner—V/s.*—Vasant Dalsing Nagarkar, At Post Ichalkaranji, District Kolhapur.—*Respondent.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

*Advocate*.— Shri R. L. Chavan, Advocate for the Petitioner.

Respondent in person present.

**Judgment**

This is a Revision by original Respondent Ichalkaranji Municipal Council challenging legality of judgment and order passed in Complaint (ULP) No. 202/2000 whereby he is restrained from dismissing his employee with a liberty to award any other punishment than the dismissal for the proved misconduct.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) is in service of present petitioner (hereinafter referred to as the Municipal Council) as a clerk since the year 1980. The Council served chargesheet dated 24th May 1999 upon the Complainant alleging absence without permissions from 18th March 1999 to 20th March 1999 and pelting stones towards employees of the Council while they were on duty. Then an enquiry took place. The Enquiry Officer held that charge of absenteesm alone is proved. The Council then served show cause notice dated 29th August 2000 upon the Complainant as to why he should not be dismissed from service.

3. The Complainant then filed above complaint on 4th September 2000 alleging that the domestic enquiry is not fair and proper and findings of the Enquiry Officer are perverse.

4. He further contended that proposed punishment of dismissal is shockingly disproportionate. According to him, therefore the Council has engaged in unfair labour practice under item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

5. The Council filed its written statement at Exh. C-21 contending that the enquiry is fair and proper and finding of the Enquiry Officer are not perverse. It further contended that Complainant's past record is not good and hence proposed punishment of dismissal is legal and proper. Finally it prayed for dismissal of the complaint.

6. The Labour Court then framed issues at Exh. O-26 and the parties went to the trial. None of the parties led oral evidence. The Complainant admitted *vide* pursis Exh. U-27 mechanism of the enquiry. The Council produced enquiry proceeding with list Exh. C-35. The Complainant produced copy of the enquiry report and final show cause notice, with list Exh. U-4.

7. Learned Labour Court on perusal of evidence and hearing both parties held that domestic enquiry is fair and proper and finding of the Enquiry Officer are not perverse. It then held that the Complainant filed leave application of 19th March 1999 and proposed punishment of dismissal for absence of three days is shockingly disproportionate. It then allowed the complaint as above *vide* judgment and order dated 1st August 2001. The same is challenged in this Revision.

8. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision holding that proposed punishment of dismissal is an unfair labour practice under item 1(*a*) (*b*) (*d*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act is justifiable ?

(*ii*) What order ?

9. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

**Reasons**

10. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether imugned order is perverse or justifiable.

11. It also needs to be stated that the Complainant has not filed counter Revision against findings of Labour Court that findings of the Enquiry Officer is fair and proper and it is not perverse. Even otherwise. I find the same to be well justifiable. The Complainant has admitted in the enquiry that he did not get prior sanction for the leave. As such, charge of absent for 3 days is proved.

12. Now, turning to the proportionality, Advocate Chavan argued that Complainant's past record is not clean and unblamished. In the past, his one increment was with held permanently, in the year 1991 and he was also warned once, there is no improvement on his part. Besides, he ought to have given explanation to the show cause notice and the Council would have certainly entertained the same. Therefore, findings of the Labour Court that there is no unfair labour practice is unsustainable in law.

13. The Complainant is in employment from the year 1980 and present is the first chargesheet to him and that too for absence of three days. It is not controverted that there was holiday on 18th March 1999 but all employees were called to do emgerency work. It is not also disputed that the Complainant submitted leave application on 19th March 1999 for leave on the ground that his daughter is suffering from cancer and has to attend Tata Memorial Hospital at Mumbai. It cannot be accepted by any stretch of imagination that the Complainant was all together negligent. Besides, absence is of three days and is well justifiable. I, therefore, find that the learned Labour Court has rightly held that proposed punishment of dismissal is an unfair labour practice. Eventially no interference is called for. Accordingly, I answer point No. 1 in the affirmative and pass following order :—

**Order**

(*i*) The Revision is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 27th August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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## BEFORE THE APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT, MAHARASHTRA AT KOLHAPUR

APPEAL (PGA) No. 2 OF 1995.—The Commissioner, Kolhapur Municipal Corporation, Kolhapur.—*Appellant*—*Vs.*—Smt. Mandakini Madhusudan Ganpate, Plot No. 14, Powar Colony, Mohite Park, Radhannagari Road, A-Ward, Kolhapur.—*Respondent.*

In the matter of Appeal u/s. 7(7) of payment of Gratuity Act.

CORAM.— C. A. Jadhav, Appellate Authority.

*Advocate*.— Shri Y. G. Salokhe, Advocate for the Appellant.

Shri M. S. Topkar, Advocate for the Respondent.

### Judgment

This is an Appeal under Section 7(7) of the payment of Grauity Act challenging legality of Judgement and order passed in Application (PGA) No. 45 of 1989 by Controlling Authority under Payment of Gratuity Act, Kolhapur directing present Appellant-Kolhapur Municipal Corporation to pay Rs. 2516.25 to present Respondent a superannuated employee as Gratuity.

2. Admittedly, present Respondent (hereinafter referred to as the employee) was in employment of present Appellant (hereinafter referred to as the Minicipal Corporation) as a part-time social worker. She was appointed on 10th September 1975 and retired due to superannuation on 30th September 1988. She made an application to the Corporation for payment of gratuity and was replied on 8th August 1989 that she is not entitled to gratuity being a part-time social worker.

3. The employee then made above application on 27th October 1989 alleging that she is entitled to gratuity of Rs. 2650 under the provisions of payment of Gratuity Act. The Corporation refused to pay the same and hence the application is filed for its determination and payment.

4. The Corporation reiterated *vide* written statement (Exh. 7) that the employee was a part-time social worker working on a fixed pay and hence it is not entitled to gratuity. A plea of limitation was also raised. The Controlling Authority then framed issues and the parties went to the trial. None of the parties lead evidence. The Competent authority, on hearing both parties held that objection of delay is unsustainable. It then held that provisions of the payment of Gratuity Act are applicable to the Corporation and the Applicant-employee is an employee as defined under Section 2(*e*) of said Act. Finally, it held that the employee is entitled to gratuity of Rs. 2516.25 and allowed the application *vide* judgment and order dated 29th February 1992. The same is challenged in this appeal.

5. I heard both Advocates at length. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of competent authority that question of limitation is unsustainable, is legal and proper ?

(*ii*) Whether the Appellant Corporation is covered by provisions of P. G. Act?

(*iii*) Whether original Applicant is 'an employee' U/s. 2(*e*) of the P. G. Act?

(*iv*) Whether impugned judgment and order is legal and proper ?

(*v*) What order ?

6. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Yes.

(*iv*) Yes.

(*v*) The Appeal is dismissed.

**Reasons**

7. It is not in dispute that original Applicant retired on 30th September 1988 due to superannuation and was working as part time social worker. Her claim for gratuity was rejected by Deputy Commissioner by reply dated 8th August 1989. However, application is filed on 27th October 1989.

8. Shri Salokhe, learned Advocate representing the Corporation argued that main application is filed on 27th October 1989 *i.e.* after one year of the retirement. As such, it is barred by limitation.

9. Rule 7 of the Payment of Gratuity (Maharashtra Rules) says that an employee shall apply ordinarily within 30 days from the date of the gratuity become payable, in Form-I to the employer. Use of the word 'Orginarily' is self eloquent. As such, it cannot be accepted that non presentation of Application within 30 days is fatal. learned Competent Authority has therefore, rightly held that the claim is not overstale. On fact, it has rightly held that the Applicant was deligent. As such, it has rightly negated plea of limitation. Accordingly, I answer point No. 1 in the affirmative.

10. Advocate Shri Salokhe argued, in the second phase that the Corporation is not ameanable to provisions of Payment of Gratuity Act and hence it is not under obligation to pay the gratuity.

11. Section 1(3) (b) of the Payment of Gratutity Act enumerates the shop or establishment to which the same is applicable. Admittedly, the Corporation has employed 10 of more persons. learned Labour Court in its elaborate discussion has rightly held that the Corporation is a establishment and is ameanable to provisions of Gratuity Act. It is not necessary to repeat those observations here. Accordingly, I answer Point No. 2 in the affirmative.

12. As regards last contentions of Advocate Shri Salokhe that the original Applicant was not an 'employee' as defined under the payment of Gratuity Act. Learned Competent Authority on persual of definition thereof has rightly held that the Applicant is not covered by the excluded category of the defining section. Accordingly, I answer point No. 3 in the affirmative.

13. To summarise, learned Competent Authority has elaborately and rightly decide all the controversy. It is futile to repeat those observations. Eventually, no interference is called for. Accordingly, I answer point No. 4 in the negative.

14. It is seen from original record and proceeding that the Corporation has deposited Rs. 2516 with the Competent Authority under protest. Hence the competent Authority is directed to pay said amount forthwith. Finally, I pass following order :—

**Order**

(*i*) The Appeal is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,

Appellate Authority under
Payment of Gratuity Act,
Kolhapur.

Kolhapur,
Dated 12th August 2002.

V. D. PARDESHI,

Asstt. Registrar,
Industrial Court, Kolhapur.

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**BEFORE THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR**

REVISION APPLICATION (ULP) No. 64 OF 2001.—Divisional Controller, Maharashtra State Road Transport Corporation, Kolhapur Division, Kolhapur—*Petitioner.—Versus*— Shri Subhash Mahadeo Alatekar, R/o. House No. 1214, E Ward, Takala, Rajarampuri, Kolhapur.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

*Advocates.*— Shri M. G. Badadare, Advocate for the Petitioner.
Shri P. J. Patil, Advocate for the Respondent.

**Judgment**

1. This is a revision by Original Respondent Maharashtra State Road Transport Corporation challenging legality of judgment and order passed in Complaint (ULP) No. 283 of 1996 by the Labour Court, Kolhapur, whereby the Corporation is directed to reinstatement its employee on previous post of cleaner with continuity of service and full back wages from 1st February 2001 onwards.

2. Admittedly present Respondent (hereinafter referred to as the Complainant) started working with present Petitioner (hereinafter referred to as State Transport Corporation) as a conductor from 12th February 1981. He met with a accident and then was physically unable to work as a conductor. He, therefore, applied to re-classify his post to the post of peon. The Corporation accepted his request. *vide* letter dated 7th May 1992, stating that he is re-classified on the post of peon. There was waiting list for the posts of peon for Kolhapur Division. Eventually, the Complainant could not be immediately taken on the post of peon. The Complainant then requested that he may be allowed to work as a cleaner till appointed on the post of peon. The Corporation accepted his such proposal and directed him to work on the post of cleaner at Kolhapur Depot, *vide* letter dated 12th October 1992. Consequently, the Complainant resumed his duties on the post of cleaner on 18th December 1992.

3. The Complainant then filed Complaint (ULP) No. 369 of 1993 before this Court alleging that the Corporation appointed two persons as peons by overriding his claim and prayed for direction to appoint him as peon. He also made an interim application (Exh. U-7) in said complaint to direct the Corporation to temporarily allow him to work on the post of peon. Interim relief as prayed was rejected on 4th February 1994., but it was directed that the Corporation shall allow the Complainant to join on the post of cleaner, till decision of main complaint. It was further directed that the Corporation shall not assign heavy work or work of cleaning its buses to the Complainant but assign suitable light work till decision of main complaint. Later on the Complaint (ULP) No. 369/1993 was disposed off on account of its non-maintainability.

4. In the mean-time the Corporation directed the Complainant by letter dated 21st February 1994 to join as cleaner at Ichalkaranji Depot as per interim order of this Court in Complaint (ULP) No. 369/1993.

5. The Corporation then served chargesheet dated 3rd July 1996 upon the Complainant under clauses 9, 10, 22 and 35 of its Discipline and Appeal Procedure mainly alleging absenteesm for the period from 20th January 1994 to 1st July 1996 and threat to burn himself before its office. The enquiry proceeded *ex-parte.* The Corporation then served show cause notice dated 25th October 1996 upon the Complainant to show cause as to why he should not be dismissed from service.

6. The Complainant then filed above complaint (Complaint (ULP) No. 283/1996) before Labour Court, Kolhapur on 31st October 1996 alleging that he was not allowed to join duties from 1st January 1993. He went to report for duties as per interim order passed by this Court in Complaint (ULP) No. 369/1993 but was not allowed to resume duties. On the contrary he was replied that no work is available as per directions in Complaint (ULP) No. 369/1993 by this Court various conditions were put on him put was not allowed to resume duties. Eventually he was required to file a complaint for non-compliance of interim order of this Court.

7. It is further case of the Complainant that he was willing to join and work on the post of cleaner, from time to time but was not allowed to join. On the contrary he was served with a chargesheet of absenteesm and that too after a period of 3 years and 10 months. The chargesheet is an act of victimisation as well as harassment. It is further alleged that the enquiry is neither fair not proper and findings of the enquiry officer are perverse. Finally the Complainant alleged that the Complainant has indulged into unfair labour practices under item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Consequently he prayed for requisite declaration of unfair labour practices, setting aside the chargesheet, enquiry report and show cause notice of proposed dismissal and to permanently restrain the Corporation from terminating his services on the basis of the chargesheet and report thereof.

8. The Corporation filed its written statement at Exh. C-9 and transversed all material allegations made by the Complainant. It contended that the Complainant worked as cleaner till 23rd December 1992 and did not resume duties thereafter. Allegation that he was not allowed to resume duties as per interim order of this Court are totally false. In fact he himself preferred to remain absent despite order of Industrial Court. Eventually he was served with chargesheet. Report of the Enquiry Officer is fair and proper and the findings are not perverse. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

9. The Complainant alongwith complaint, made an application (Exh. U-2) under section 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971. It was allowed by the Labour Court directing the Corporation to appoint him on the post of peon within three months. It was also directed that the Complainant shall was immediately start working on the post of cleaner. The corporation challenged said order *vide* Revision Application (ULP) No. 180/1997. It was allowed on 29th January, 2000 and the interim order passed by learned Labour Court came to be set-aside. Eventually the Complainant came to be dismissed from service by order dated 1st February 2001.

10. The Complainant then amended the complaint contending that dismissal order dated 1st February 2001 is illegal an unfair labour practice and then prayed for reinstatement with continuity of service and full back wages. The Corporation justified its action of dismissal.

11. The Labour Court then framed issues at Exh. 38 and the parties went to the trial.

12. Issue regarding fairness of the enquiry was to be decided as preliminary. The Complainant then examined himself at Exh. U-9. Learned Labour Court on perusal of evidence and hearing both parties held by order dated 12th September 2001 that domestic enquiry is not fair and proper and gave liberty to Corporation to adduce oral evidence to substantiate action of dismissal. No revision is preferred against such order and thus it became conclusive.

13. The Complainant then examined himself at Exh. U-65 and produced copies of his representations to allow him to join duties and other documents. The Corporation justified its action, examined Estate Supervisor, Depot Manager and other Depot Managers to show that the Complainant never approached for resuming duties and was absent.

14. Learned Labour Court after hearing both parties held that there are no reasons for inaction regarding complainant's alleged absence from 23rd December 1992 till was relieved on 12th June, 1993 for joining at Ichalkaranji. It then on perusal of medical certificate and letters of the Complainant observed that the Complainant reported at Ichalkaranji as per order of this Court as well as Corporation's letter dated 21st February 1994 but was not allowed to resume duties and was asked to give in writing that he can do any work. It then further observed that the Corporation did not reply letters of the Complainant dated 16th March 1994, 18th March 1994 and 21st March 1994 regarding his willingness to resume duties but tried to create documentary evidence contrary to the facts. It also held that "Charcha Tharav" dated 11th November 1994 signed by the Divisional Controller is self eloquent wherein various controversies were settled out not of alleged absenteesm. It further observed that clause 2 in the "Charcha Tharav" that the Complainant will not claim wages from 4th February 1994 makes Complainant's theory of refusal to allow him to join duties, more probable. It also found that various conditions

put forth in the "Charcha Tharav" are contrary to interim directions given in Complaint (ULP) No. 369/1993 of this Court and the Complainant was not allowed to join duties. It than disbelieved testimony of respective Depot Managers on the ground that documentary evidence falsify their version and is contrary to the facts. It also held that chargesheet of absenteesm was issued as the Complainant filed many cases against the Corporation. Likewise, in-ordinate delay in issuing the chargesheet regarding alleged absenteesm makes the theory of absenteesm doubtful. Ultimately, it accepted case of the Complainant and held that the Corporation failed to justify Complainant's dismissal and has engaged in unfair labour practices. Finally, it allowed the complaint, as above, *vide* judgment and order dated 5th October 2001. The same is challenged in this revision.

15. I heard both Advocates at length. Considering rival submissions, following points arise for my determination :—

(1) Whether findings of the Labour Court that the Corporation has failed to justify Complainant's dismissal, is justifiable ?

(2) Whether finding of the Labour Court that Complainant's dismissal is an unfair labour practice under items 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, is justifiable ?

(3) What order ?

16. My findings on above points are as under :—

(1) Yes.

(2) Yes.

(3) The revision application is dismissed.

**Reasons**

17. This being a revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order ? In order words, whether impugned order is perverse of justifiable.

18. Before proceeding further, I must state that Complainant's alleged entitlement to be appointed on the post of peon is not subject matter of original complaint. He filed Complaint (ULP) No. 314 of 1996 in this Court through Union to direct the Corporation to appoint him on the post of peon. It as dismissed on 6th November 2001. He has challenged the same *vide* Writ Petition No. 3700/2002 which is still pending in the Honourable High Court. Honourable High Court has directed in said writ petition to decide this revision application within 3 months from receipt of the writ thereof. Copy of Honourable High Court's order was produced by the Complainant himself on 7th May 2002.

19. Shri Badadare, learned Advocate representing the Corporation vehementaly argued that the Complainant was transferred to Ichalkaranji by order dated 20th January 1993 on request. The Complainant was absent from 23rd December 1992 and ultimately relieved on 12th June 1993 by sending relieving order by registered post acknowledgment due to the Complainant. The Complainant was absent from 24th December 1992 onwards. The Complainant was informed by letters dated 1st June 1995, 20th June 1995, 13th July 1995 and 1st February 1996 to join at Ichalkaranji but did not join. Shri Koli Depot Manager of Ichalkaranji, Shri Bhosale Assistant Traffic Superintendent of Ichalkaranji and Shri Kamble Sr. Depot Manager of Ichalkaranji have no grudge against the Complainant and there is no reason for them to falsely depose that the Complainant never came to resume duties. As such, finding of Labour Court that the Complainant was not allowed to join duties is unsustainable. In fact, the Complainant was transferred to Ichalkaranji on his request.

20. Shri Patil, learned Advocate representating the Complainant replied that finding of fact recorded by the Labour Court cannot be re-appreciated while entertaining Revision under section 44 of the M.R.T.U. and P.U.L.P. Act. Findings of fact recorded by the Labour Court are reasonable, proper and justifiable. He further added that the Complainant made application time and again to allow him to resume duties but none of such application were replied. On the contrary, false evidence is tried to be created. The Corporation was directed to give light work to the Complainant but the "Charcha Tharav" dated 11th November 1994 made it incumbent upon the Complainant that he should state in writing that he is willing to accept any work. There was no reason whatsoever for such discussion and condition. In fact, the Complainant enquired as to why he was appointed on the post of peon and hence was purposely transferred to Ichalkaranji and that too against his wish and it was tried to be shown that he was transferred on his request.

21. There is nothing on record to show that the Complainant was willing to get transferred from Kolhapur to Ichalkaranji on the contrary he has requested time and again to allow him to resume at Kolhapur. His transfer order dated 20th January 1993 nowhere refers about his request to transfer to Ichalkaranji. Thus, it can be well said that he asked as to why he was not appointed on the post of peon and thereafter was transferred to Ichalkaranji, Although his transfer is not subject matter of the Complainant. Such inference is reasonable and probable and is rightly drawn by Labour Court.

Such inference is totally forti field by the fact that he was neither relieved till 12th June 1993 nor any action was taken for his alleged aabsenteesm till 12th June 1993.

22. I must state at this stage itself that alleged absenteesm from 20th January 1994 onwards is subject matter of the chargesheet as well as the enquiry and hence adjudication about alleged absenteesm prior to 20th January 1994 is unwarranted.

23. Advocate Shri Badadare further argued that burden lies upon the Complainant to prove that he is not guilty of misconduct. He is challenging the termination and it for him to lead evidence and explain the circumstances. But the Labour Court has accepted his case by dis-believing evidence of the Corporation which is unsustainable in law. For that end, he relied on the decision in *Canara Bank Ltd.* Vs. *Union of India reported in 1998 (78) FLR at page 995 (Allahabad H. C.).* He further added that there is no delay in serving the chargesheet. Absenteesm was till 1st July 1996 and the chargesheet is served on 3rd July 1996. Even otherwise, delay does not vitiate the enquiry. For that and he relied on the decision in *Dattu Sargar* Vs. *Dock Manager, Bombay Port Trust reported in 1997 (77) FLR at page 128 (Bom. H. C.).*

24. Advocate Shri Patil replied that the Complainant has led the evidence in the form of statement on oath as well as various representations. Domestic enquiry was found to be unfair and improper. Corporation was given liberty to adduce oral evidence and then it was adduced. Therefore, it cannot be said that the Complainant has not discharges his burden. Learned Labour Court has held that the Complainant was willing to join duties but was not allowed. As such, question of vitiating the enquiry does not arise.

25. Learned Labour Court has recorded a finding of fact that the Complainant was not allowed to resume duties and chargesheet of absenteesm is after thought. Both parties have led the evidence. The same referred in detail by learned Labour Court. Eventually, it cannot be accepted that the Complainant has not discharged his burden. Question of visiting the enquiry does not arise as the learned Labour Court has held that the enquiry is not fair and proper. Said finding is not challenged by the Corporation and is now final. Thus, the Corporation cannot now go beyond said order and say that the findings of the Enquiry Officer are justifiable.

26. The Complainant has produced number of letters sent to the Divisional Controller, Kolhapur with list Exh. U-18. He sent letter dated 7th March 1994 that he is willing to join. He sent letters dated 18th March 1994 and 21st March 1994 that he got himself examined medically and went to Ichalkaranji Depot for joining but the Depot Manager did not allow him to join. He also protested in those letters that he is *malafidely* transferred to Ichalkaranji and

be re-transferred to Kolhapur. The Corporation has replied by letter dated 13th July 1995 that light work is not available although such directions are given by this Court and he should join Ichalkaranji forthwith. The Complainant in the mean time, has sent letters dated 28th April 1995, 6th June 1995 and 14th June 1995. There are many other letters on record. Those are not replied by the Corporation. In such circumstances, findings of fact recorded by learned Labour Court cannot be faulted with.

27. In such circumstances, I do not find any perversity in impugned decision. No doubt, period of alleged absenteesm is not marginal one but the very absenteesm is not proved. On the contrary, it is proved that the Complainant was not allowed to resume duties. As such, learned Labour Court was well justified in directing reinstatement with continuity of service and full back wages from 1st February 2001 onwards *i. e.* from the date of dismissal.

28. To summarise, evidence on the record justify findings and conclusion of learned Labour Court and there is no perversity. Respective observations and findings are reasonable and well commensurate with preponderance of probabilities. The evidence cannot be re-appressed and findings of fact warrant no interference. Learned Labour Court therefore has rightly held that the Corporation has indulged into an unfair labour practice. Accordingly, I answer Point Nos. 1 and 2 in the affirmative and pass following order :—

**Order**

*(i)* The Revision application is dismissed.

*(ii)* No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 17th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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## IN THE INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 64 OF 1997 IN COMPLAINT (ULP) No. 58 OF 1994.— Mr. Padmakar Mukund Paradkar, 1/5, Vrindavan Society, Sarvoday Nagar, JM Road, Bhandup West, Mumbai 400 078.—*Applicants.*—*Versus*— (1) N.C.P. Employees Co-op. Credit Society Ltd., Vikram Sarabhai Bhavan, Anushakti Nagar, Chembur, Mumbai 400 094, (2) Mr. D. C. Parmar, Secretary, N. P. C. Employees Co-op. Credit Society Ltd., Chembur, Mumbai 400 094, (3) Shri S. D. Pathane, Presiding Officer, Eighth Labour Court, Mumbai.—*Opponents.*

In the matter of revision application under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971 against the order dated 15th March 1997 passed by the Presiding Officer in Complaint (ULP) No. 58 of 1994.

*Present*.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

*Appearances*.— No appearance on behalf of the Applicant.
Mrs. M. R. Phal, Advocate for the Opponents.

### Judgement and order

1. The Applicant employee was the Complainant in the complaint being Complaint (ULP) No. 58 of 1994 filed against the present Opponent Nos. 1 and 2 before the Labour Court, Mumbai, for declaration that they have engaged in committing unfair labour practices under item 1(*a*), (*b*), (*d*) and (*f*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971, and for the relief of reinstatement in service with full back wages and continuity of service (hereinafter the Applicant employee is referred to as "the Complainant employee" and the Opponent No. 1 is referred to as "the Respondent society" and the Opponent Nos. 1 and 2 are referred to as "the Respondents").

2. The Complainant approached the Labour Court with the following facts :—

The Respondent No. 1 is the co-operative credit society of the Nuclear Power Corporation and it is functioning from the year 1977. The Respondent No. 2 is the Secretary of the Managing Committee of the Respondent society. The Respondent society is having about 1500 members and it had employed 2 clerks, including him. He has further contended that he was not given and appointment letter before he joined the service of the Respondent Society as a clerk in the month of June, 1990. He was required to work from 9.00 a.m. to 5.00 p.m. on all the working days. He has further contended that sometime in the month of September, 1992, it was come to the notice about misappropriation of the fund of the Respondent society occurred in the month of March, 1992. The said misappropriation was duly investigated by the authority of Nuclear Power Corporation in the month of November, 1992. Then, the other clerk *viz*. A.S. Decuna deposited a part of misappropriated amount in the month of January, 1992. He has further contended that the Respondent society lodged a complaint with the police about the said misappropriation against other clerk Mr. A. S. Decuna or 14th January, 1994. He (Complainant) was called in connection with the said offence for investigation. In connection with the said offence, he obtained a bail from the concerned Court and he was released on bail on 20th January 1994 and due to the said reason, he could not attend his duty during the said period. He has further contended that on 24th January 1994, he reported for duty. At that time, he gave an application to the Respondent society for explaining reason for his absence. He thereafter worked on 25th January 1994. On that day, in the evening at about 5.00 p.m. he was called in the managing committee meeting. In the said meeting, the Respondent No. 2 and the Chairman and of the Respondent society told him that he should not come for duty from the following day. Thus, he was not given any letter of termination of his service. On 27th January 1995, he went to report for duty, but he was not allowed to enter the office of the Respondent society. Then, the Administrative Officer and the Security Officer of Nuclear Power Corporation took his identity card/pass required for entering into the premises of the Nuclear Power Corporation. He, therefore, approached the Government Labour Officer against the action of his illegal termination. He is, therefore, having apprehension that the Respondents may recruit new hand in his place with a view to deprive his legitimate right. Hence the complaint.

3. The Respondents filed their written statement and resisted the complaint. According to them, the Complainant employee was appointed on temporary basis on consolidated salary with effect from 1st July 1990, and his services were terminated with effect from 25th January 1994 on the reason of his involvement in the offence of misappropriation under sections 408, 420, 467, 468, 471 read with section 114 of the I. P. Code registered by the Trombay Police Station. He was in the custody of the police from 15th January 1994 to 21st January 1994. Then, he was released on bail. They have further contended that there were 2 employees, including the Complainant employee, in the office of the Respondent society. He was appointed purely on temporary basis to do part-time work from 9.00 a.m. to 12.00 p.m. on the working days on consolidated salary of Rs. 500 p.m. plus travelling allowance. He was studying in the college, therefore, he was employed with a view to help him. They have further contended that it was necessary to surrender the identity card by the Complainant employee and he surrendered the same. They have further contended that the Complainant employee is not a "workman" and the Respondent society is also not an "industry". So considering all the facts, the complaint be dismissed with costs.

4. The trial Court framed the issues at Exh. C-3. Then, both parties produced their evidence, oral as well as documentary. Then, on hearing both parties, the trial Judge was pleased to dismiss the complaint by his judgment/order dated 15th March 1997. Being aggrieved by the said impugned order the Complainant has brought this revision application on the grounds as given in his revision memo.

5. On considering the written arguments the following points arise for my determination and I have recorded my findings thereon for the reasons stated therein below :—

| *Points* | *Findings* |
|---|---|
| (1) Whether the trial Judge has rightly decided the issues and has rightly dismissed the complaint ? | Yes. |
| (2) Whether it is necessary to interfere with the findings and judgment/order dated 15th March 1997 passed by the trial Judge ? | No. |
| (3) What order ? | As per the order below. |

**Reasons**

6. It appears from the material before the trial Court that there is no dispute that the Complainant employee was working with the Respondent society as a clerk from May/June, 1990 to the date of his termination on consolidated salary of Rs. 500 per month. The Complainant employee was neither given appointment letter, nor given any termination letter. It is also not disputed that the Complainant employee was arrested by the police in connection with the offence of misappropriation of amounts of the Respondent society and he was under arrest from 15th January 1994 to 20th January 1994. After his release on bail, he reported on duty on 24th January 1994. It is also not disputed that no enquiry was held against him, nor any chargesheet or memo was issued to him before terminating his service.

7. The Complainant employee came with the case that he was doing work from 9.00 a.m. to 5.00 p.m. on all working days. But the evidence of the witness *i. e.* the Honorary Secretary of the Respondent society shows that the Complainant employee was doing the work from 9.30 a.m. to 12.30 p.m. but the Complainant employee used to leave the office by 5.00 p.m. Further his evidence shows that the Complainant employee was sitting there for study purpose. This evidence goes unchallenged and on the evidence the trial Judge has held that the Complainant was doing duty from 9.30 a.m. to 12.30 p.m. But the Complainant employee has alleged contrary with a view to show that he was full time employee of the Respondent society.

8. The learned Advocate for the Complainant employee had relied on 3 decisions of our High Court and the Supreme Court. They all are on the point of termination of service. The trial Judge discussed all the decisions. The first case is between Promer Sales Pvt. Ltd. and Manohar Sondhar reported in *1993 I CLR 116 Bombay*. In that case, the employee was terminated without complying with the provisions of section 25-F of Industrial Dispute Act and also without domestic enquiry or issue of any show cause notice. On the facts, their Lordships have held that the said termination of service is in utter disregard of the principles of natural justice and *malafide* in the colourable exercise of the employer's right and therefore the company is indulged in unfair labour practice under item 1(a) (b) and (f) of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Second case is of the Supreme Court reported in *1988-II-CLR-220*. It is also held by Their Lordships that if the service of the employee is terminated in violation of section 25-F of the I.D. Act, then the order of termination of service is referred to as abanition void and the employee will be entitled to continuity of service with full back wages. The facts in the present case are different than the facts in the above both the cases. In the present case the Complainant employee came to be terminated on the reason of his involvement in serious criminal offence and his detention in the police custody for 4-5 days.

9. The third case is between Mazdoor Congress and S. A. Patil and others, reported in *1991-I-CLR-512-Bombay*. In that case, the workman was arrested on 8th August 1975 in connection with theft and therefore his service came to be terminated with effect from 14th August 1975 on account of loss of confidence. Considering the facts, Their Lordships have held that the termination of service of the workman was with undue haste. The above decision is over-ruled by the decision of the Supreme Court. The trial Judge has also mentioned this fact that the learned Advocate for the Complainant employee pointed out the over-ruled case of the Court.

10. The decision of the Supreme Court, which set aside the decision of the Bombay High Court is reported in *1986 II LLN 885-SC*. Wherein, Their Lordships have held that the termination of service of the workman was done only after 5 days of the arrest cannot be said that there was any haste on the part of the company. The trial Judge has also discussed the case of Air India Corporation *Vs.* V. A. Rebellow, reported in *1972-I-LLJ-501-SC*. In the said case, the services of the employees were terminated on the reason of loss of confidence on account of grave suspection regarding his private conduct behaviour with air hostesses and passengers. On the facts, Their Lordships have held that once bonafide loss of confidence is affirmed the impugned order must be considered to be impugned from challenged. The opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, if bonafide, is final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the service of the employee, but such termination can on rational ground, be considered to be for misconduct and must, therefore, be held to be permissible and immuns from challenge. In the present case the Respondent society has given reason that the Complainant being its employee has misappropriated its fund and therefore, the Complainant employee has been terminated from service. The admitted facts also show that the Complainant employee was arrested by the police in connection with the misappropriation. So considering the ratio in both the Supreme Court case of Mazdoor Congress and Air India Corporation *(supra)* and the facts of the present case the action on the part of the Respondent society in terminating the services of the Complainant employee is just and proper. The trial Judge has also rightly held the same.

11. The Respondents have contended that the Complainant is not a workman/employee within the meaning of "employee/workman". Its Society is also not an 'industry'. The trial Judge has also discussed these points properly and held that the Complainant employee is a workman/ employee and the credit society is not an industry. While considering this point the trial Judge has also considered the Industrial Disputes (Amendment) Act No. 46 of 1982.

12. From the above discussions, it appears that trial Judge has rightly decided all the issues and has rightly recorded his findings on the issues and also rightly passed the judgment/ order dated 15th March 1987. It is, therefore not necessary to interfere with the findings or judgment/order of the trial Court. In the result, the points Nos. (1) and (2) are hereby decided accordingly.

13. With this, I proceed to pass the following order :—

**Order**

Revision Application (ULP) No. 64 of 1997 is hereby dismissed with no order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 30th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.

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## IN THE INDUSTRIAL COURT AT MUMBAI

CRIMINAL REVISION APPLICATION (ULP) No. 02 OF 1994 IN CRIMINAL APPLICATION (ULP) No. 53 OF 1994.—(1) Abhyudaya Co-op. Bank Limited, KK Tower, Parel Village, Mumbai 400 012, (2) Shri John D'Silva, Managing Director, Abhyudaya Co-op. Bank Ltd. — *Applicants—Versus—* (1) Shri V. E. Potdar, Presiding Officer, 5th Labour Court, Mumbai, (2) Shri Arun S. Shringarpure, Sai Ashis, S. V. Road, Bandra West, Mumbai 400 050.—*Opponents.*

In the matter of revision application under section 43(*2*) of the M.R.T.U. and P.U.L.P. Act.

*Present.*— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

*Appearances.*— Jaideep Singh, Advocate for the Applicants.
Mrs. Neelima Kanetkar, Advocate for the Opponents.

### Judgement and order

1. The Applicants have filed this revision application against the order issuing process dated 7th June 1994 and the order dated 7th November 1994 rejecting the application for personal exemption passed in the Misc. Criminal Complaint (ULP) No. 53 of 1994 filed by the Opponent No. 2 before the Labour Court, Mumbai (hereinafter the Opponent No. 2 is referred to as "the Complainant employee" and the Applicant No. 1 is referred to as "the Respondent bank" and both the Applicants are referred to as "the Respondents").

2. The brief facts appear from the record are as under :—

Initially the Complainant employee filed a complaint being Complaint (ULP) No. 96 of 1994 against the Respondents under item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act for declaration of unfair labour practices and for quashing his termination order dated 14th February 1994 and for his reinstatement with full back wages. An application Exh. U-4 was also filed alongwith the said complaint. On hearing both parties and on considering the material on records, the trial Judge was pleaded to allow the application Exh.U-4 and thereby directed the Respondents to withdraw temporarily the letter of termination dated 14th February 1994 and to reinstate him in service or to pay full wages subsistence allowance till further orders. Being aggrieved by the said order the Respondents preferred a revision being Revision Application (ULP) No. 53 of 1994 against him before the Industrial Court, Mumbai. In the said revision application an application Exh. U-7 was filed for stay of the order under challenge. The said revision application and the application for stay therein came up for hearing before the President, Industrial Court, Mumbai. On considering the application Exh. U-7 and the say thereon and also hearing both the parties, the Honourable President was pleased to stay the said impugned order till final disposal of the said revision application, on depositing the wages in the Court. It further appears that thereafter he filed Misc. Criminal Complaint (ULP) No. 53 of 1994 before the Labour Court, against the Respondents for contempt of the Industrial Court/Labour Court under section 48(*1*) of the M.R.T.U. and P.U.L.P. Act. On presentation of the said complaint the trial Judge proceeded further to record his (Complainant) verification. Then, the trial Judge was pleaded to issue process under section 48(*1*) of the M.R.T.U. and P.U.L.P. Act, against the Respondents *vide* order dated 17th May 1994. It further appears that the Respondent No. 2 appeared in the Misc. Criminal Complaint before the Labour Court on 4th October 1994 and made an application for personal exepmation and for permission to be represented by his Advocate. On considering the facts and arguments from both sides the trial Judge was pleaded to dismiss the said application.

3. Being aggrieved by the said order issuing process dated 7th June 1994 and the order dated 7th November 1994 rejecting the application for personal exemption the Respondents have filed this criminal revision application on the grounds as mentioned therein.

4. Heard the learned Advocate for the Respondents. Then, this matter was fixed on 26th August 2002 for arguments of the Complainant employee. On that day the Complainant employee filed an application Exh. U-6 for allowing this Court to pass the necessary final order/judgment in this matter by considering his written statement as his arguments. Therefore, this matter is fixed today for final order/judgment.

5. Considering the arguments advanced by the learned Advocate for the Respondents and the material placed before this Court the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

| *Points* | *Findings* |
|---|---|
| (1) Whether the trial Judge has rightly passed the order issuing process dated 7th June 1994 ? | Yes. |
| (2) Whether the trial Judge has rightly disposed of the application Exh. U-4 for personal by passing order dated 7th November 1994 ? | Yes. |
| (3) Whether it is necessary to interfere with both these orders ? | No. |
| (4) What order ? | As per the order below. |

**Reasons**

6. It is to be noted that before the complaint being Complaint (ULP) No. 96 of 1994 the Complainant employee had filed one complaint being Complaint (ULP) No. 128 of 1989 for restraining the transferor bank from terminating his services of the transferor bank and obtained *interim relief* from the said Court. Thereafter, the Divisional Joint Registrar, Co-operative Society, Bombay Division, passed an amalgamating the transferor bank *viz*. Bandra people's Co-op. Bank Ltd. wherein the Complainant was working with the Respondent Bank with effect from 7th May 1990.

7. This criminal revision application is mainly brought against the order issuing process dated 7th June 1994. On this point the learned Advocate for the Respondents has submitted that the said order issuing process is illegal. But, he could not give sufficient particulars as to how the said order issuing process is illegal. On perusal of the material on record, it appears that on the Misc. Criminal complaint the trial Judge proceeded to record examination of the Complainant/verification as required under section 200 of the Criminal Procedure Code. The said examination is signed by the Complainant employee. The trial Judge has signed the same to show that the said examination is recorded before him. On the same day, he passed the detail order issuing the process. This order shows that he has considered the examination recorded under section 200 of Criminal P. C. and also the complaint documents etc. Then he pass the following order :—

"Heard the Complainant. His statement is recorded on oath under section 200 of Criminal P. C. Perused the complaint and the documents filed. It *prima facie* appears that there is a restraining order from effecting the termination of service of the Complainant. It also appears that inspite of the said order of the Court the services of the Complainant have been terminated

by the accused with retrospective effect by a letter of termination dated 14th July 1994. Strong *prima facie* case is made out. The complaint discloses the offence complained of. In my opinion, there are sufficient grounds to proceed against the accused, hence :—

**Order**

Issue process under section 48(*1*) of the M.R.T.U. and P.U.L.P. Act against all the accused. Process R/o. 7th June 1994.

On perusal of the above order it clearly shows that the trial Judge has passed speaking order by giving the reason and on considering the material including the examination under section 200 of Criminal P. C. and has come to the conclusion that there are reasonable grounds to proceed against the Respondents. Thus, it does not appear that there is any irregularity in following the process of law.

8. The Respondents have also challenged the order dated 7th November 1994 passed below the application dated 4th October 1994 for personal exemption to the Respondent No. 2. The said order is as under :—

"Heard both parties, Perused the application and say filed. The learned Counsel for the accused submitted that the application for exemption will be filed as and when required. Besides this, there cannot be a blanket exemption to be granted to the accused. Hence, the application is filed with a permission to the accused to file application for exemption as and when required and the same will be ordered on merits."

On perusal of the same, it appears that the trial Judge heard both parties and also considered the application filed by the Respondent No. 2. Then the trial Judge passed the order and thereby refused to grant blanket exemption. However, the Respondent No. 2 was permitted to file application for exemption as and when required. In this regard, the learned Advocate for the Respondents has also not pointed out any irregularity, in passing such order. So considering the facts of the case and the order passed by the trial Judge, on the application for exemption, does not appear to be illegal or in contravention of the law.

9. The learned Advocate for the Respondents has submitted that the Respondents bank was not a party to the first complaint being Complaint (ULP) No. 128 of 1979 and no order was passed against it in the said complaint. Therefore, no process can be issued against it under section 48(*1*) of the M.R.T.U. and P.U.L.P. Act. From the facts, it appears that later on, the Complainant filed another complaint being Complaint (ULP) No. 96 of 1994 before the Labour Court against the Respondents and obtained *interim relief* and the trial Judge granted the reliefs in his favour. Being aggrieved by the said interim order, the Respondents filed revision application (ULP) No. 53 of 1993 before the Industrial Court, Mumbai, and the Honourable President, Industrial Court stayed the said *interim relief* order on depositing the wages in Court. Since the Respondents did act of terminating the services of the Complainant employee, in contravention of the *interim relief* the Complainant employee has brought the misc. criminal complaint and on the said complaint the trial Judge has issued process and decided the application for personal exemption. Thus, it is not necessary to consider as to whether the Respondent bank was a party in the first complaint or not.

10. Admittedly the Bandra People's Co-operative Bank Ltd. merged with the Respondent bank by an order dated 30th April 1990 passed by the Divisional Joint Registrar of Co-op. Society, B. D., Mumbai. Before the amalgamation the Complainant was in the service of the former bank. Thereafter he filed the second complaint being Complaint (ULP) No. 96 of 1994

against the Respondent bank in which the former transferee bank was merged and also against the Managing Director of the Respondent bank. After the amalgamation the Respondent bank terminated the services of the Complainant employee with retrospective effect. On the above facts, it cannot be said that both the said orders under challenged are illegal.

11. From the above discussions, it appears that the trial Judge has rightly passed the order issuing process dated 7th June 1994 and also rightly decided the application for personal exemption by his order dated 7th November 1994. It is, therefore, not necessary to interfere with any order. In the result the point Nos. (1) to (3) are hereby decided accordingly.

12. With this, I proceed to pass the following order :—

**Order**

Criminal Revision Application (ULP) No. 2 of 1994 is hereby dismissed with no order as to costs.

M. L. HARPALE,

Member
Industrial Court, Mumbai.

Mumbai,
Dated 2nd September 2002.

K. G. SATHE,

Registrar,
Industrial Court, Mumbai.

**BEFORE THE INDUSTRIAL COURT AND APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972**

EXHIBIT No. O2

APPEAL (PGA) No. 8 of 1995 *IN* APPLICATION (PGA) No. 432 OF 1989.—The Divisional Controller, Maharashtra State Road Transport Corporation, Palghar Division, Parel, Mumbai-400 025.—*Applellant.*—*Versus*—(1) Shri Baban Mahadeo Salekar, 2/11, Sadguru Manoli Ashram, Eksar Koliwada, Borivali (West), Bombay 400 103, (2) Shri V. E. Potdar, Controlling Authority appointed under the Payment of Gratuity Act and Judge, Fifth Labour Court, Mumbai.—*Respondents.*

In the matter of an appeal under sub-section (7) of section 7 of PG Act read with Rule 18 of the Gratuity Rules, 1972.

PRESENT.— Shri M. L. Harpale, Member, Industrial Court, Mumbai and Appellate Authority under the Payment of Gratuity Act, 1971.

*Appearances.*— Shri B. K. Hegde, Advocate for Appellant.
Shri A. D. Jani, Advocate for Respondent Employee.

**Judgement and order**

1. The present Appellant was the Opponent in the application being Application (PGA) No. 432 of 1989 filed by the present Respondent No. 1 before the Controlling Authority appointed under the Payment of Gratuity Act and the Judge, Fifth Labour Court, Mumbai, under section 4 of the Payment of Gratuity Act (hereinafter the Appellant is referred to as the Opponent Corporation" and the Respondent No. 1 is referred to as the "Applicant-Employee").

2. The Applicant/Employee has approached the controlling authority and Judge, Fifth Labour Court, Mumbai with the following facts :—

He made an application on 24th April 1989 to the Opponent-Corporation under rules of the Payment of Gratuity Act. But the Opponent Corporation refused to entertain his application. He had put in near about 20 years and 4 months continuous service with the Opponent Corporation and his last drawn salary was Rs. 1600 per month. It is further contended that he was ceased to be in the employment of the Corporation with effect from 20th October 1986 and therefore he was entitled to the amount of gratuity of Rs. 19,295.

3. On appearance, the Opponent Corporation filed its written statement. According to it, the Applicant-Employee was issued a chargesheet dated 30th August 1986 for committing grave and serious misconduct. Then, the enquiry was held into the said charges and on enquiry, the Applicant employee was found guilty of the charges levelled against him. Then, the Applicant-Employee was served with the show cause notice and then he was dismissed from services of the Opponent Corporation. It is further contended that the charges proved against the Applicant-employee amounted to an offence involving moral turpitude. Therefore, the amount of gratuity came to be forfeited and the claim with regard to the gratuity be rejected.

4. On considering the evidence produced by both parties, the trial Judge was pleased to allow the application for releasing part of the amount of gratuity with interest. Being aggrieved by the said impugned order, the Opponent Corporation has brought this appeal on the grounds as given in its appeal memo.

5. Heard the learned Advocates for both parties. On considering their arguments and the material before the Court, the following points arise for my determination and I have recorded my findings thereon for the reasons stated therein :—

| *Points* | *Findings* |
|---|---|
| (1) Whether the trial Judge has rightly decided the issues, recorded his findings and passed final order dated 21st June, 1995 ? | Yes. |
| (2) Is it necessary to interfere with the findings and final order recorded / passed by the trial Judge ? | No. |
| (3) What order ? | As per the final order. |

**Reasons**

6. It is not disputed that the Applicant employee was in service of the Opponent Corporation for more than 20 years. His services came to be terminated by the Opponent Corporation with effect from 20th October 1986. At that time, his salary was about Rs. 1600 per month. It is also not disputed that the Applicant employee was chargsheeted and the enquiry into the said charges was held and on findings of the enquiry officer the punishment of dismissal from service was awarded to the Applicant employee, but he did not challenge the punishment of dismissal before a competent Court/authority.

7. In the present case the Applicant employee was charged for shortage of amount of Rs. 9999.90. Therefore three charges *viz*. (1) indiscipline; (2) gross negligence and (3) dishonesty/ misappropriation came to be levelled against him. On enquiry he was found guilty of the charges levelled against him. Then he was dismissed from services of the Opponent Corporation.

8. The main question is an to whether the charges proved against the Applicant employee involve moral turpitude. On this point the trial Judge has held that the Applicant employee is guilty of misconduct and it by, no stretch of imagination can be said to be an offence involving moral turpitude as there was no dishonesty or *malafide* intention on the part of the Applicant employee to cause loss to the Opponent Corporation. Considering the facts on record, it also appears that there is no dispute between the parties that the loss caused to the Opponent Corporation was due to negligence on the part of the Appelicant employee. It is therefore clear that the negligence on the part of the Applicant employee cannot be treated to be an offence involving moral turpitude.

9. The learned Advocate for the Opponent Corporation has relied on one case between Narayan R. Bhosekar and Municipal Corporation of Greater Bombay, reported in *2002 (1) MLJ 57 (Bombay).* In the said case, the Petitioner Deputy Engineer of the BEST Undertaking was dismissed from service after he was found guilty in full-fledged enquiry of charges of fraud, dishonesty, falsification and destruction of personal records of Undertaking which involved moral turpitude. On the facts, their Lordships have held that the acts done by the Petitioner Deputy Engineer involved moral turpitude and therefore forfeiture of his full gratuity was justified. In the present case the act committed by the Applicant employee is amounting to negligence in his duty. This fact about negligence in duty is also not disputed by the parties. If it is so, it cannot be said that the act/offence committed by the Applicant employee involved moral turpitude. The ratio in the aforesaid case cannot be made applicable to the facts of the present case.

10. It appears from the impugned judgment and order of the trial Judge that the learned Advocate for the Applicant employee and the learned Advocate for the Opponent Corporation were in agreement that the Corporation should forfeit the amount of gratuity to the extent of the loss caused to the Opponent Corporation. So considering the evidence on record and the submissions made by them, the trial Judge came to conclusion that the Applicant employee caused damage / loss to the tune of Rs. 9999.90 and therefore, the Opponent Corporation cannot forfeit the entire amount of gratuity of Rs. 19255. Since he gratuity is the retrial benefit and the Applicant employee is not involved in any moral turpitude, the Opponent Corporation cannot forfeit the entire amount of gratuity.

11. The trial Judge has also allowed interest at the rate of 10% per annum on the unpaid gratuity amount by deducting the loss caused to the Opponent Corporation from 20th November 1986 *i. e.* from the date when the gratuity became due to the Applicant employee.

12. Here, the learned Advocate for the Opponent Corporation has submitted that the Applicant employee is not entitled to gratuity as the offence committed by him (Applicant employee) involved moral turpitude. In support of his submission, he has relied on the case of Narayan Bhosekar (*supra*). But it appears from the above decision that the offence / charge does not involve moral turpitude. Therefore, the trial Judge allowed the application in respect of part payment of gratuity amount and disallowed the amount of gratuity equal to the loss

caused to the Opponent Corporation as agreed by the learned Advocates for both parties. Therefore, I have no hesitation to hold that the trial Judge has rightly recorded his findings on the issue and passed the final order dated 21st June 1995. Therefore, it needs no interference in the findings, judgment and the final order dated 21st June 1995 passed by the trial Judge. In the result, the Point Nos. (1) and (2) are hereby decided accordingly.

13. With this, I proceed to pass the following order :—

**Order**

Appeal (PGA) No. 8 of 1995 is hereby dismissed with no order as to costs.

M. L. HARPALE,

Appellate Authority under the
PG Act and Member,
Industrial Court, Bombay.

Mumbai,
Dated 3rd August 2002.

K. G. SATHE,

Registrar,
Industrial Court, Mumbai.

———————

## IN THE INDUSTRIAL COURT OF MAHARASHTRA, MUMBAI

EXHIBIT No. O6

BEFORE SHRI M. L. HARPALE, MEMBER

COMPLAINT (ULP) No. 465 OF 1988.—Kum. Jayashree N. K., A-6, B.A.R.C. Quarters, Postal Colony, Chembur, Bombay 400 071.—*Complainant.*—*Versus*—(1) The Kerala State Electronics Development Corporation Ltd. 102,-A, Poonam Chambers, Dr. A. Besant Road, Worli, Mumbai 400 018, (2) Shri Raj Kaul, Senior Manager, The Kerala State Electronics, Development Corporation Ltd. 102-A, Poonam Chambers, Dr. A. Besant Road, Worli, Mumbai 400 018, (3) Shri V. A. Sukumaran, Asstt. Manager, The Kerala State Electronics, Development Corporation Ltd. Nirmal Nariman Point, Mumbai 400 021.—*Respondents.*

In the matter of under item 1 of Schedule II and items 6 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri M. L. Harpale, Member

*Appearances.*— Shri P. Gopalkrishnan, Advocate for Complainant.
Shri A. S. Peerzada, Advocate for Respondents.

### Judgement

1. The Complainant-employee, has filed this complaint under item 1 of Schedule II and items 6 and 9 of Schedule IV of M.R.T.U. and P.U.L.P. Act for declaration of unfair labour practices and other reliefs.

2. The briefly stated the case of the Complainant union is as under :—

The Respondent No. 1 is a Government Company owned by the Government of Kerala. It is a industry within the meaning of section 2(*g*) of the Industrial Disputes Act. It has its establishment at Bombay at the address given in the title. It has also other two establishments at Bombay. One at Prabhadevi and other is at Nariman Point. All these establishments being commercial establishments are registered under the Bombay Shops Act. It is employed about 110 employees in all establishments (hereinafter Respondent No. 1 referred as the Corporation). It is further contended that Respondent No. 2 is a Senior Manager of the Corporation and is incharge of all establishment at Bombay. The Respondent No. 3 is the Assistant Manager of the establishment at Nariman Point, Bombay and is incharge of said establishment. It is further contended that she was employed as a temporary stenographer by the Respondents in Purchase Department, Keltrons Control Division at Nariman Point, Bombay w.e.f. 10th August 1986. But she was not given an appointment letter. She was orally told that she would be confirmed in services on any permanent vacancy after completion of probation period of six months. It is further contended that she is in continuous employment of the corporation from 10th August 1986 except break effected by the Respondents. The Respondents have failed and neglected to include her in the register of employment and other records. The Respondent paid wages to her through out on the vouchers describing payment as payment for job work done at @ Rs. 600 per month. The Respondent have also neglected to enroll her as a member of Provident Fund, but she was paid bonus in the last year. It is further contended that in the statement and returns submitted by the Respondent Nos. 2 and 3 to their registered office at Trivendrum (Kerala). She has been shown as temporary stenographer. Her work is not of casual or temporary in nature. The wages and other service conditions of services/privileges extended to her are far less than the permanent employee of the Corporation working at Bombay and doing the same and similar work of stenographer. It is further contended that she completed 240 days of working continuously during the preceding 12 months. She therefore sent a letter dated 30th January 1988 to the Respondent No. 2 through Respondent No. 3 and thereby requested to confirm her in the service. But the Respondents neither replied the said letter nor complied with her request. Then she approached the Respondent No. 2 and 3 on 11th March 1988 and requested them to confirm her in services, else she would join the Keltron employees association for instituting appropriate proceeding. The Respondent Nos. 2 and 3 therefore told her that she would be discharged from services. They also warned her for not joining the Complainant union and taking up any proceedings. Hence this complaint.

2-A. The Respondents have filed their written statement at Exh. C-9. According to them the present complaint is filed mainly for claiming permanency in the post of stenographer by invoking item 6 of Schedule IV. Such complaint can be filed only by the recognised union *i. e.* Keltrons employees association. Thus the Complainant is not competent to file this complaint under item 6 of Schedule IV. They have further contended that the Head Office of the corporation is situated at Trivendrum and it has branch office at Madras, Hyderabad, Banglore, Bombay Ahemadabad, Delhi, Calcutta etc. and sub offices are at Bhopal, Patna etc. The appropriate Government in relation to an industrial dispute is a central Government therefore the provisions of M.R.T.U. and P.U.L.P. Act would not apply to the Corporation. They have further contended that the Complainant has not specified as to which sub item of item 1 of M.R.T.U. and P.U.L.P. Act has been invoked. Further Complainant or her trade union has not informed anything about joining of any union. Therefore item 1 (a) is not attracted. They have further contended that they have no intention to effect any lockout or closure. Similarly they have not granted any wage increase to any employee. Therefore item 1 (a) (b) and (c) of Schedule IV do not attract. They have further contended that there is no pleading to show as to how and what manner they have failed to implement the award settlement or agreement. They have further contended that the Complainant has been employed as casual employee from time to time during the leave vacancy and therefore she has no right to claim permanency as per the certified standing orders. Since vacancy was essentially of a casual nature, no test or interview was held. The Complainant was employed on clear understanding that her employment is purely of casual basis which would be terminated after purpose of casual employment is served. They have further contended that the recognised union had not made any demand pertaining to permanency of the Complainant. The Complainant also failed to inform as to which union she had joined. Therefore, there is no question of terminating the services of the Complainant on the allegations of joining any particular union. They have further contended that the Government of Kerala *vide* its circular dated 5th January 1988 has informed that a recruitment should be made through employment exchange only. Since concern Complainant was not engaged through the employment exchange, she can not be absorted unless her name is recommended by the employment exchange. They have further contended that the Complainant has no legal right to claim permanency as per the provisions of the certified standing order. Further the Complainant was not issued any appointment letter, as her appointment was of casual nature at that time she was not orally told anything that she would be confirmed after completion of probation for six months. The Complainant was not given the benefits which were given to the permanent employees because she was never appointed as probationer or through the employment exchange. So considering the above facts the complaint may be dismissed with the cost.

3. On the pleadings and the documents of both the parties my Predecessor has framed the following issues and I have recorded my findings thereon for the reasons given below :—

| *Issues* | *Findings* |
|---|---|
| (1) Whether Complainant proves that the Respondent have engaged in unfair labour practices under of Schedule II and items 6 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 as alleged ? | Proved, interest of Unfair Labour Practices under item 1 items 6 and 9 of schedule IV. |
| (2) Whether Complainant is entitle to any reliefs as claimed ? | Yes, as per order below. |
| (3) What order ? | As per below. |

**Reasons**

4. The Complainant employee has examined herself and other two witnesses *viz*. Mr. Anand Brite and Mr. Mathew P. Thomas. On the other hand the Respondents have examined only one witness *viz*. Gopinath G. Adiyodi the General Manager of the Respondent Corporation. Besides the oral evidence the parties have relied on the documentary evidence *viz*. Circular dated 5th January, 1988 issued by the Labour (G) Department, Govt. of Kerala the standing orders of the Respondent Corporation etc.

4-A. It is not disputed that the Complainant employee was employed by the Respondent Corporation with effect from 10th August 1986 and she joined the office at Nariman Point, Mumbai of the Respondent Corporation. However, she was not given any appointment letter before or on the day of her joining. It is also not disputed that before joining she was not given a call letter for interview and or test. Even she had not made any application to the Respondent Corporation for her appointment before her interview and test or at the time of her interview and test.

5. The main question is whether the Complainant employee was employed as temporary or casual employee/Stenographer by the Respondent Corporation in the Purchase Department, Keltron Control Division at Nariman Point, Mumbai. On this point the evidence of the Complainant employee shows that he was allowed to join her service as temporary Stenographer/ employee on and from 10th August 1986 after conducting her interview and test by the Assistant General Manager Mr. V. S. Sukumaran, *i. e.* the Respondent No. 3. During her cross-examination, she was suggested by the learned Advocate for the Respondents that initially she was employed as a temporary employee and the Respondent Corporation used to call her whenever there was vacancy. She admitted the first part of the suggestion that initially she was employed as a temporary employee but she denied the second part that the Respondent Corporation used to call her whenever there was vacancy. Thus the suggestion put to her clearly shows that she was initially employed as temporary employer. So far as the application for employment and interview call are concerned, her evidence shows that she was orally called by the Respondent No. 3 for her interview and test and both the things were conducted 2 days before the joining. It further appears from her cross-examination that she was appointed as temporary employee on probation period of 6 months and she was assured to confirm in the service of the Respondent Corporation.

6. It further appears from the evidence of Gopinath G. Adiyodi that the Respondent No. 3 has recruited the Complainant employee as casual employee without prior sanction/ approval of the Head Office at Trivendarm. Meanwhile, the Respondent Corporation declared a scheme of voluntary retirement and in pursuance of the said scheme, 650 employees in all the branches opted for the said VRS. The Complainant employee was eligible for the same, though the Complainant employee was employed as casual employee. But, he could not give any particular during his cross-examination about the vacancy in which the present Complainant employee was employed as casual employee. Even he could not give any rule under which the Complainant employee was employed as casual Stenographer. Further, he could not say as to when the irregular appointment of the Complainant employee came to the light. Considering the entire evidence, it shows that there is no evidence, except the mere word of this witness, that the complaint employee was employed as casual employee. In case, the Complainant employee would have really appointed as casual employee the Respondents would have shown documentary evidence to that effect. In absence of any such specific documentary evidence the evidence of the Complainant employee is to be believed. The learned Advocate for the Respondents has also suggested during the cross examination of the Complainant employee, that she was employed as temporary employer.

7. The evidence of the Complainant employee further shows that no muster roll was maintained for her, but there was a muster roll register for ordinary employees. The Administrative Department used to note her presence in one note book. The Respondent Corporation does not maintain account of her leave. She has also not been provided with leave card as given to other employees. All other employees are given 30 days Privilege Leave, 10 days Sick Leave and 12 days Casual Leave per year. Inspite of several applications she has not been granted any leave at any time. Whenever she proceeded on leave her leave was treated as without pay. Her further evidence shows that the Respondent Corporation used to pay her salary payment by obtaining her signatures on the vouchers. But she was not given a copy of the said vouchers. Her further evidence shows that she was not enrolled as a member of the Employees Providence Fund Scheme., till the filing of the present complaint. So far as the above facts are concerned the Respondents have not challenged her evidence. The Respondents' witness Mr. Gopinath G. Adiyodi has also not deposed anything on the service conditions not provided to the Complainant employee. The Complainant employee has further stated that now she has been given punching card for the purpose of noting her presence and after the present complaint she has been enrolled as member of the Employees Provident Fund Scheme. These facts are also not disputed by the Respondents. Therefore, it appears that the Complainant employee has been deprived of from getting leave and other privileges, as given to other employees. She was also deprived of from becoming a member of the Employees Provident Fund Scheme.

8. As regard monthly salary the evidence of the Complainant employee shows that she was getting salary of Rs. 600 per month. At the same time, other Stenographers were getting Rs. 1400 per month salary. From the Annexure-B filed alongwith the complaint, it shows that she was paid wages during the year upto January, 1988 and onwards, which were less than the Minimum Wages as given in the Annexure-B to the complaint. Though the Complainant employee has stated all these things in her evidence the contents in Annexure-B to the complaint and the entire evidence on the point of her wages is not disputed or challenged by the Respondents. Even the witness examined by the Respondents has not stated anything about her salary. The only suggestion put to her in her cross-examination is that she is being paid her wages for the actual working days. The fact remains that she was paid her wages at the rate of Rs. 600 per month *i. e.* for 30 days. It, therefore, appears that the Complainant employee has not been paid her salary wages as per the provisions of the Minimum Wages Act.

9. As regards her duties the Complainant employee has stated in her evidence that the Deputy Manager of the Respondent Corporation used to give her dictation and she used to take down the same in the shorthand notebook supplied by the Respondent Corporation. She used to type the dictation with the help of the typewriter or computer of the Respondent Corporation. The Respondent Corporation used to supply stationery to him for typing. The Deputy Manager used to give her instruction with regard to her duties. The Deputy General Manager of the Respondent Corporation used to sign letters and documents typed by her. During her cross-examination she has stated that there is no change in the quantum of her work. She is taking down dictations of the Corporation's correspondence letters etc. She is required to type 3/4 letters in a day. Some of them remains more than 2 pages. Besides the letters she is required to type monthly and annual statements of account department prepared by the Account Manager. From her evidence, it appears that the there is continuous work for the Complainant employee in the Respondent Corporation. It is also pertinent to note that the witness Mr. Gopinath G. Adiyodi, deposed on behalf of the Respondents, has specifically admitted in his cross-examination that there is a work for the Complainant employee from 1988 onwards. He has further admitted that it does not appear that either in the reply Exh. C-3 or in the written statement Exh. C-9 filed by the Respondents that there is a mentioning about the non-

non-availability of work for the Complainant employee from 1988 onwards. Any way, from the evidence of the Complainant employee and the admissions given by the witness for the Respondents, it appears that there was / is work available in the Corporation for the present Complainant employee.

10. The Complainant employee has filed the statement showing the length of employment of the Complainant employee with the Respondent Corporation, the statement showing the rates of minimum wages under the Minimum Wages Act and the Minimum Wages Rules and the wages actually paid to the Complainant by the Respondents Corporation, the comparative statement of wages and service conditions applicable to the permanent Stenographers of the Respondents Corporation employed at Mumbai office and those applicable to the present Complainant etc. *vide* the list Exh. U-4. But the Respondents have not disputed the correctness of the said Annexure in their written statement. On this point she has specifically stated in her evidence that the contents in the said Annexure-A are correct. Her evidence is also not challenged during her cross-examination. On perusal of the said Annexure-A, it appears that the Complainant employee joined the Respondent Corporation on 10th August 1986 and she was firstly working with it from 10th August 1986 to 21st October 1987 *i. e.* 438 days of uninterrupted service and 365 days of continuous service in the period of 12 calender months preceding 21st October 1987. Further, it appears that thereafter she worked from 26th October 1987 to 24th December 1987. In between the said period, there was a cessation of work for 5 days. Considering the above period and this period, it appears that she worked for 360 days during 12 calender months preceding 24th December 1987. It further appears that she was employed on 5th January 1988 onwards and since then she is in the employment of the Respondent Corporation. Therefore, it appears that the Complainant employee has completed more than 240 days of continuous service with the Respondent Corporation in a year after she joined the Respondent Corporation.

11. The Respondents have come with the case that the Government of Kerala *vide* its Circular dated 5th January 1988 has informed the Respondents that the recruitment should be made through the Employment Exchange and only experience gained by any person in appointment secured in violation of the instructions therein in the public sector establishments will not be taken into account for giving weightage in the matter of sponsoring candidates. It is their further case that the Complainant employee was not employed through the Employment Exchange and, therefore, she cannot be absorbed unless her name is recommended by the Employment Exchange. On perusal of the said Circular dated 5th January 1988, it appears that the Government of Kerala had issued 4 Circulars in this connection prior to this circular dated 5th January 1988, and they are on the point of direct recruitments by the public sector undertakings in violation of the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act and the Government instructions. As per the said Circulars the Government of Kerala issued directions to all the Chief Executives of the Government establishments/undertakings/boards/companies/Corporations that the services of the employment exchanges should be utilised for filling up vacancies coming outside the purview of the Public Service Commission. They were also directed that the experience gained by any person in the appointments secured in violation of the Act and the instructions will not be taken into account for giving weightage in the matter of sponsoring the candidates. In the present case, the Complainant employee has admitted that she had not enrolled her name in the office of the Employment Exchange. It is also not a case of the Complainant employee that her name was recommended by the Employment Exchange and on its recommendation, she came to be appointed in the Respondent Corporation. Thus, one thing is clear that she has not been appointed through the Employment Exchange, as required by the provisions in the Employment Exchange Act and the Kerala Government instructions.

12. Now the question is whether the said appointment of the Complainant employee is regular. On this point the learned Advocate for the Respondents has submitted that the Complainant employee was appointed without any application interview and test, Secondly she has not been appointed through the Employment Exchange as required by the Employment Exchange Act and as per Kerala Government directions. Thus, the appointment of the Complainant employee is illegal and irregular and without following due procedure of appointment. In support of his submissions he has relied on the case of Ashawinikumar and others *Vs.* State of Bihar and others, reported in *1997-II-LLJ-856 SC.* In the said case the initial entry into service is illegal and void and not against the sanctioned post. On the facts, Their Lordships have held that the question of regularisation would never survive for consideration. Regularisation can be made only when the appointment is made against the clear vacancy on *adhoc* basis on daily wages. In such cases, the initial entry of such employee must be made against the available sanctioned vacancy by following rules and regulations. Regularisation can also arise when entry of an employee against available vacancy has suffered from some flaw over the appointments made by the competent person as per the recruitment procedures. If initial entry is totally illegal and in blatant disregard of rules and regulations the regularisation cannot be made. He has also relied on the case of Municipal Corporation, Vilaspur *Vs.* Veersingh Rajput and others, reported in *1998 (80) FLR 847-SC.* Wherein it is held by Their Lordships that the directions/orders by the High Court for regularisation of the concerned workmen are not warranted where the employees have been appointed under the political considerations and there are serious irregularities discovering the appointments. He has also relied on the case of Krishan Yadav and others *Vs.* State of Hariyana and others, reported in *1994-II-CLR-600 SC.* In the said case, the selection and appointment to the post of Taxation Inspector by the subordinate selection board was challenged. The record of selection was however destroyed. The investigation of the CBI was called for. On the basis of the said report, Their Lordships have held that the said selection was based on fake and ghost interview, grave irregularities, ministerial inferences and favouritism and such selection list and fresh selection deserves to be set aside. He has also relied on the 4th case of Divakar Sharma *Vs.* University of Delhi and others reported in *2000-II-CLR-51 (Delhi).* In the said case the employee was given an *adhoc* appointment as Junior Assistant-*cum*-Typist for 4 months. His appointment came to be extended from time to time for few years. Then, he alongwith others about 700 workmen were called for test/interview but he was not selected and his services came to be terminated. It was his contention that in view of his long and unblemished service, he should have been given a preferential right to be regularised. On the facts, Their Lordships have held that the statutory bodies have to fill up the post on regular basis after following the statutory recruitment rules and even long period of service as *adhoc* employee does not confer any right of regularisation. As *adhoc* employee has a right to be considered for the post when it is to be filled on regular basis in accordance with the rules. From the observations in the above cases it appears that the present Complainant's entry into the service is against the procedure of recruitment given by the Employment Exchange Act and the directions issued by the Government of Kerala. There are several irregularities in her appointment. If it is so, whether the said appointment and entry into service of the Complainant employee can be said to be irregular.

13. The learned Advocate for the Complainant employee has submitted that the appointment of the Complainant employee cannot be said to be irregular only because she has not been recruited through the Employment Exchange. In support of his submission he has relied on 4 cases. First is of Narsimhamoorthy *Vs.* The Directorate of Collector at Education reported in *1967-II-LLJ-606-(Mysore).* It is held in the said case by Their Lordships that wherein the object of the Employment Exchange Act is not to prohibit the appointment being made by the employer to fill up vacancies occurring in their employment. Sub-section (*4*) of section 4 makes it clear

that there is no obligation upon employer to recruit persons through the employment exchange to fill up the vacancies occurring in his establishment. There is no provision in the Act for rendering invalid any appointment made without complying with the requirements under section 4(*1*) and (2). The second case is between Bikash Lal Dev *Vs.* State of West Bengal and others, reported in *1999-LAB-IC 2012 Calcatta.* Wherein, it is held by Their Lordships that the provisions under section 4 of the Employment Exchange Act is the directory and not mandatory. The said provisions does not limit employment only to the persons sponsored by the employment exchange and it does not restrict the employer from appointing candidates not sponsored by the employment exchange. The third case is between James Yesudan *Vs.* Malbar Cements Limited and others reported in *1096-II-CLR-164 (Kerala).* Wherein, it is observed by Their Lordships that merely because there is an obligation on the employer to notify vacancy to the employment exchange is not bound to recruit persons sponsored by the employment exchange alone. The employer is free to recruit other persons also if they are better suitable. The fourth case is. Executive Superintendent *Vs.* K. B. N. Vishweshwarao reported in *1997 I LLN 08 SC.* Wherein, it is held by Their Lordships that restricting to selection only the candidates sponsored by the Employment Exchange held not proper. The candidates sponsored by the Employment Exchange and those who have applied on the basis of the advertisement, both should be considered. Such provision would subserve the fair play justice and equal opportunity. In the present case the Complainant employee was not sponsored by the employment exchange. But, she was employed to meet the requirement of the Respondents. Section 4 of the Employment Exchange Act does not restrict such appointment. Secondly, she was not appointed on political considerations and her appointment was not based on any grave irregularities or ministerial interference. Therefore, her appointment cannot be said to be illegal or irregular, in view of the above observations, in the cases relied on by the Respondents.

14. The Complainant employee has come with the case that she has completed 240 days of work continuously during the period of 12 calender months. She, therefore, sent a letter dated 30th January 1988 to the Respondent No. 2 through the Respondent No. 3 and thereby requested them to confirm her in their service. But, the Respondents neither replied her letter nor accepted her request. Then, she approached the Respondent Nos. 2 and 3 on 11th March, 1988 but no use therefore she has brought the present complaint. However, no prayer for relief of her permanency is made in the prayer coloumn of her complaint. On this point the learned Advocate for the Complainant employee has submitted that though there is no specific prayer in the complaint for her permanency in service the Court can could the relief and grant the relief of permanency by considering the substance of the pleadings. In support of his submission he has relied on the following decisions :—

(1) Janaki Rama Iyer *Vs.* S. R. Koothananiar Pillai reported in (*AIR 1962 633 SC).*

(2) Austin Distributors Pvt. Ltd. *Vs.* Nil Kumar Das reported in *(1970 LAB IC 823 Cal. DB);*

(3) Bhondoo and others *Vs.* Udatoo, reported in *(AIR 1970 307 Allahabad);* and

(4) Vohara Abbasali *Vs.* Mohammedalli Lakhanwala reported in (*AIR 1979 179 Punjab and Hariyana).*

All the above decisions are on the same point. The ratio therein is that the trial Courts have power to could the reliefs and grant decree as required by the merits of the case, even in the absence of such prayer. The Court has inherent power to consider all the relevant allegations, go by the substance of the pleadings and not to form and grant reliefs which are implied even if not specifically asked for. In the present case the Complainant employee has specifically pleaded in her complaint for her right of permanency. She has also given the

particulars about her working from the date of her appointment and also during 12 months preceding the letter. The only fact is that she could not produce any acknowledgment to show that she had given any such letter/application to the Respondent Nos. 2 or 3 or both. On this point the learned Advocate for the Respondents has submitted that there is no pleading with regard to item 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, therefore, this item would not attract to the complaint. From the above discussions it appears that there is pleading in the complaint that she had worked 240 days continuously during the period of preceding 12 months and she had sent a letter and she had personally approached the Respondent Nos. 2 and 3. Thus, it cannot be said that there is no pleading in the complaint about the fact with regard to her working and claim of permanency. The only fact is that the Complainant has not asked the relief about permanency in the prayer column of her complaint. The present complaint is also brought under item 6 of Schedule IV. If it is proved that the Respondents have engaged in unfair labour practices under item 6 of Schedule IV, the present Complainant employee may be given the relief of permanency in view of the observations in the above decisions.

15. On the point of permanency the learned Advocate for the Respondents has relied on the case of Sharma Das and others *Vs.* Supdt. Durgapur Sub-Divisional Hospital, reported in *1997-(75)-FLR- 945 (Calcatta).* In the said case, Their Lordships have held therein that a casual worker does not derive a right to be permanently absorbed in service, merely because he has continuously worked for more than 240 days. It is further held that mere continuance or prolonged service does not ripen into regular service and to claim substantive or permanent status. In the present case the Complainant employee was employed as temporary employee and she has also worked continuously for 240 days in a year.

16. The evidence of the witness Mr. Gopinath G. Adiyodi examined by the Respondents shows that there is work for the Complainant employee from 1988 onwards. Of course, she has not been terminated from service and she has been continued as per the Court's order. As regard the previous period she was working in the Control Division from 1986 to 1988. If we consider all the facts together it appears that there is continuous work for the present Complainant employee in the Respondent company and she was doing the work assigned to the Stenographer. Thus, the facts in the above case of Sharma Das (*supra)* are not identical to the facts in the present case.

17. The learned Advocate for the Complainant employee has submitted that the Respondent No. 1 is a Corporation owned by the Government of Kerala. Therefore, it cannot be claimed to be the Central Government as appropriate Government in respect of its Mumbai establishment. In support of his submission he has relied on the case of Steel Authority of India *Vs.* National Union Water Front Workers, reported in *2001-III-CLR-349-SC.* Wherein, it is held by Their Lordships that in respect of even a statutory corporation or company owned by the Central Government and engaged in economic activities, the appropriate Government under the ID Act and the Contract Labour Act would be the Government of State and not the Central Government. Notwithstanding the facts that the corporation and/or the Government company is an agency of the State for the purpose of Article 12 of the Constitution of India. In the present case the learned Advocate for the Respondents has not strongly disputed this point of "appropriate Government". Since the establishment of the Respondent company is situated in Mumbai and it is not denied that the Mumbai establishment is not registered under the Bombay Shops and Establishments Act, the appropriate Government in relation to the present Respondent company is the State Government in view of the observations in the above decision.

18. The learned Advocate for the Complainant has further submitted that the Industrial Employment (Standing Orders) Act is applicable to the Respondent company but the Respondents have not complied with the statutory provisions therein. In the present case, the Respondent

company has its certified standing orders approved by the concerned authority in the State of Kerala. But its Bombay office failed to get the said certified standing orders and approved from the concerned authority in Maharashtra. Therefore, it appears substance in the submission made by the learned Advocate for the Complainant that the provisions of the Industrial Employment (Standing Orders) Act is applicable to the present case.

19. On the point of limitation the learned Advocate for the Respondents has submitted that the present complaint is filed in the month of March, 1988 but there is no cause of action mentioned in the complaint. On perusal of the complaint, it appears that in para 17 of the complaint the Complainant has stated that the approached the Respondents to desist from engaging in unfair labour practice on 30th January 1988 by her letter and on or about 11th March, 1988 in person, but the Respondents gave no response to her. From reading the entire complaint, it also appears that the Complainant has brought this complaint when her request for permanency was refused by the Respondents. On 30th January 1988 and 11th March, 1988. It, therefore cannot be said that there is no cause of action to bring the present complaint.

20. The learned Advocate for the Complainant has submitted that the Complainant employee has completed 240 days of continuous work in a year. Therefore, she is entitled to claim for permanency. From the evidence on record with regard to Annexure-A filed alongwith the application Exh. U-4 it appears that she has completed 240 days of continuous service in a year before the present complaint. If it is so, the question arises as to whether the Complainant can claim for permanency. The learned Advocate for the Complainant has relied on several cases on the point of permanency. First case is between Indian Tobacco Co. Ltd. And the Industrial Court and others reported in *1990-I-CLR-88-Bombay.* In the said case the Respondent employee put in 17 months of service. From the said facts, Their Lordships have held that in such case it is permissible to draw an inference that the said employee allowed to continue in the post beyond the maximum period of probation, has been confirmed in the post by implication. He has further relied on the case of Pune Municipal Corporation *Vs.* Ashok S. Jadhav and others reported in *2002 II BCR 47 (Bombay).* In the said case, the workmen were kept temporary for more than 240 days and they were deprived of from getting permanency status. On the facts, Their Lordships have held that the object of the fact would be thwarted if burden is placed on the workmen to establish that the employer had deprived the workmen of permanent status. Since the workmen have completed 240 days in service, they are entitled to permanency. In view of the observations in both these cases it appears that the Complainant has completed more than 240 days in service in her post of Stenographer and hence she is entitled to permanency.

21. The learned Advocate for the Complainant has also relied on the cases on the point of equal pay for equal work. The first case is between B. Kondandapani and Director of Text Books, Banglore, reported in *1985 LAB IC 1296 (Karanataka).* In the said case proof reader in the Government Press temporarily promoted as proof examiner and, therefore, Their Lordships have held that he cannot be denied the pay scale of proof examiner on the ground that he is not qualified to hold that post. The second case is. West Bengal State Government Homeopathic Officers Association *Vs.* West Bengal and others, reported in *1986 II CLR 410 Calcatta.* In the said case the Petitioners Nos. 2 to 14 were *adhoc* Homeopathic Medical Officers. On considering the facts, Their Lordships have held that there can be no reason for refusing to the Petitioners who are performing similar duties as the regularised officers, proper scale of pay simply because they are *adhoc* officers. Further case is, Dhirendra Chaimoli *Vs.* State of Utter Pradesh and others reported in *1866 II LLJ 134 SC*. In the said case, the employees were engaged as casual workers on daily wage basis and they were performing identical work as Class IV employees. But they were not paid the same salary and allowance of Class IV employees. On

the facts, Their Lordships have held that the casual workers cannot be denied the same salary and conditions of service of regularly appointed Class IV employees when they perform the same duty as Class IV employee appointed on regular basis. Further, he has relied on the case of the Surindersing and Industry *Vs.* Engineer in Chief and others reported in *1986 I CLR 124 SC.* Wherein, it is held by their Lordships that the Petitioners/employees employed by the Central Public Works Department, on daily wage basis are entitled to the same wages as the permanent employees employed to do identical work as per the principle of equal pay for equal work. In the present case the evidence of the Complainant employee about her working is not disputed but she was initially paid salary at the rate of Rs. 600/- per month while other Stenographers were getting Rs. 1400/- per month. The extract Annexure-B attached to the list Exh. U-4 also shows that she was not even paid wages as per the Minimum Wages Act.

22. The Respondents have produced on record xerox copy of the telex message dated 4th April 1979 which show that the Special Secretary, Industrial Department, Government of Kerala issued the same to all the Executive of all public sector undertaking and thereby informed that all the appointments, including those in worker category in the Government and Government Undertakings were to be postponed with immediate effect. It was further informed that in case any appointment orders were issued and if the persons had not joined before 4th April 1987, such employees would not be allowed to join his duty. In the present case, the Complainant employee was appointed and she joined her duty on 10th August 1986. Therefore, this telex message cannot be taken into consideration. He has also filed a copy of the letter dated 21st March 2001 issued by the Principal Secretary, Government of Kerala to all Chief Executives of public sector undertakings and others. The said copy of letter is accompanied by copy of the judgment of Kerala High Court. On perusal of the letter and the said judgment, it appears that the Government of Kerala informed all the Chief Executives of public undertakings, the decision dated 25th September 2000 in O.P. No. 20042/98 filed by Smt. Jyoti S. S. regarding regularisation of temporary employees. In the said decision; the High Court of Kerala has observed that an attempt for regularisation of temporary employee on the ground that they are in service for a long time is ultra vires, illegal, arbitrary and is violative of Article 14 of Constitution of India. Further, the Honourable High Court has observed that the temporary employees now continuing in service shall be forthwith terminated and such vacaneies shall be immediately reported to the Public Service Commission for making regular appointment. In the present case, the learned Advocate for the Complainant employee has submitted that the said judgment of Honourable Kerala High Court is for challenging validity and legality of 2 circulars dated 13th January 1995 and 9th March 1995 issued by the Government of Kerala. The said circulars will have force of law in respect of any territory within that State and not other States, including Maharashtra. He has further submitted that the Respondents have also not filed a certified copy of the said judgment. Therefore, this Court cannot arrive at any judicial decision on the grounds canvassed by the Respondents. In the present case the appropriate Government is the Government of Maharashtra in respect of the establishment of the Respondent company situated in Mumbai and therefore the M.R.T.U. and P.U.L.P. Act, and the Industrial Employment Standing Orders Act are applicable to the establishment of the Respondent company in Mumbai. Here, it is to be decided whether the Respondents have engaged in any unfair labour practices contemplated by the above Acts. If it is proved that the Respondents have engaged in unfair labour practices as alleged the present Complainant employee will be entitled to the necessary reliefs. With due respect, I must say that both the Acts are applicable to the State of Maharashtra, wherein the establishment of the Respondent company is situated and while deciding the case, Their Lordships have not considered both the Acts. The Honourable High Court of Kerala in the case of James Yesudas (*supra*) and the Honourable High Court in the case of Excise Supdt. Malkapattam (*supra*) have held that section 4 of the Employment Exchange Act cannot restrict the selection only the candidates sponsored by the employment exchange. So considering all the facts, it appears substance in the submissions made by the learned Advocate for the Complainant employee.

23. The present complaint is brought under item 1 of Schedule II and under items 6 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. So far as item 1 of Schedule II is concerned, the learned Advocate for the Respondents has submitted that there is no evidence on record to show that the Respondents have indulged in unfair labour practices under item 1 of Schedule II of the Act. The learned Advocate for the Complainant employee has also admitted the same and submitted that he does not want to press the said item. Thus, it remains only 2 items, *viz.* items 6 and 9 of Schedule IV. In this connection it is to be noted that the evidence of the Complainant employee on the point of Annexure-A to Exh. U-4 is not disputed. On perusal of the same it appears that the Complainant employee worked from 10th August 1986 to 21st October 1987 and she worked continuously for 438 days. Then, she worked from 26th October 1987 to 24th December 1987 and she completed 360 days of actual working. Meantime, there was cessation of work for 5 days but not due to her fault. Then, she is in continuous employment from 5th January 1988. Thus, she completed 340 days of work during the month prior to the present complaint. The learned Advocate for the Complainant employee has submitted that the employee should not be kept years together as temporary means that he should not be kept as such for a long period. What constitutes a long period would depends on the facts and circumstances of each case. In some cases, keeping an employee for less than 2 years as temporary is considered as worked for years. In support of his submission, he has relied on the case of Chief Officer, Sangli Municipal Council *Vs.* Dharamshing Hiralal Nagarkar reported in *1991 II CLR 04 Bombay.* In the said case the workmen was employed every month from 1st June 1979 to 1st September 1980 as temporary by issuing letters of appointment. On the facts, Their Lordships have held that the action of appointing the said employee every month itself shows that the employee had no intention of making the said workmen permanent and as such indulged in unfair labour practices. In the present case the period of working is more than the period in the above cited case. Therefore, it can be construed as the Complainant employee continued in service for years together as temporary employee.

24. The learned Advocate for the Complainant employee has also relied on several decisions of our High Court to show that failure to implement award, settlement or agreement and depriving the workmen of permanent status amount to unfair labour practices under items 6 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Since there is no dispute, with regard to the legal position of law, it is not necessary to discuss the said decisions in detail.

25. From the above discussions it appears that the establishment of the Respondent company in Mumbai is governed by the Industrial Employment (Standing Orders) Act and Bombay Industrial Employment (Standing Orders) Rules and it constitutes the terms and conditions of service of the Complainant employee. In view of the standing orders the Complainant employee is entitled to confirm in service in terms of provisions in the standing orders as she put more than 240 days in service within 12 months prior to 24th December 1987. The evidence of the Complainant employee also shows that she was not allowed to enjoy privilege leave, sick leave, casual leave etc., as provided by the standing orders. The evidence with regard to the leave is also not disputed by the Respondents. Besides the above facts, the evidence of the Complainant employee also goes unchallenged about non maintenance of the muster roll/attendance register etc. as per provisions of the Bombay Shops and Establishment Act. The Respondents also failed to produce the concerned registers, though asked by the Complainant. So considering all the facts, I have no hesitation to hold that the Respondents have indulged in unfair labour practices under items 6 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. In the result, the Issue No. (1) is hereby decided accordingly.

26. In view of my finding on the Issue No. (1), the Complainant employee is entitled to get declaration and confirmation in service and also for consequential reliefs thereto. In the result, the Issue No. (2) is decided accordingly.

27. With this, I proceed to pass the following order :—

**Order**

(1) Complaint (ULP) No. 465 of 1988 is hereby partly allowed.

(2) It is hereby declared that the Respondents are engaged in unfair labour practices under items 6 and 9 of Schedule IV if the M.R.T.U. and P.U.L.P. Act, 1971.

(3) The Respondents are hereby directed to cease and desist from engaging in such unfair labour practices.

(4) The Respondents are directed to give status to the present Complainant employee as permanent employee and to give her all benefits of permanent employee with effect from 24th December 1987.

(5) The Respondents are further directed to pay the difference in wages and allowances, if any to the Complainant employee within a period of 6 months.

(6) Complaint stands disposed of accordingly, with no order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 19th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 19th September 2002.

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